

**TAB 90**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL ) MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION  
PRICE LITIGATION ) 01-CV-12257-PBS

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THIS DOCUMENT RELATES TO )  
United States of America, et al.,) Judge Patti B.  
Ven-a-Care of the Florida Keys, ) Saris  
Inc., )  
vs. )  
Boehringer Ingelheim, Corp., ) Chief Magistrate  
et al. ) Judge Marianne B.  
Civil Action 07-10248-PBS ) Bowler

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(Cross-caption appears on following page)

VIDEOTAPED DEPOSITION OF SHELDON BERKLE

VOLUME I

Naples, Florida

Friday, October 31, 2008

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| <p style="text-align: right;">26</p> <p>1 Altus?</p> <p>2     <b>A. May 2005.</b></p> <p>3     Q. Prior to that time where did you work?</p> <p>4     <b>A. Just prior to that I had been retired</b></p> <p>5 <b>for just over a year, and prior to that with</b></p> <p>6 <b>Boehringer Ingelheim in the United States, and</b></p> <p>7 <b>prior to that in Canada.</b></p> <p>8     Q. When you say Boehringer Ingelheim in</p> <p>9 the United States, do you mean Boehringer</p> <p>10 Ingelheim Pharmaceuticals, Incorporated?</p> <p>11     <b>A. Correct.</b></p> <p>12     Q. Is it okay if we refer to that</p> <p>13 sometimes today as BIPI?</p> <p>14     <b>A. Yes.</b></p> <p>15     Q. Is BIPI part of a larger family of</p> <p>16 companies?</p> <p>17     MR. GASTWIRTH: Objection to form.</p> <p>18     THE DEPONENT: Yes, it is.</p> <p>19 BY MR. FAUCI:</p> <p>20     Q. Is that -- Is it okay if I call that</p> <p>21 sometimes the Boehringer Ingelheim family of</p> <p>22 companies?</p> | <p style="text-align: left;">28</p> <p>1     <b>A. Yes, there was.</b></p> <p>2     Q. When was that?</p> <p>3     <b>A. It was November 1994.</b></p> <p>4     Q. And when did you stop working for</p> <p>5 Boehringer Ingelheim's American operations?</p> <p>6     <b>A. The end of 2003.</b></p> <p>7     Q. Upon transfer to the U.S., which</p> <p>8 specific entity did you work for?</p> <p>9     <b>A. BIPI.</b></p> <p>10     Q. BIPI. What was your position there?</p> <p>11     <b>A. Executive vice president.</b></p> <p>12     Q. Executive vice president.</p> <p>13     Did you have -- Did you have a position</p> <p>14 at any other Boehringer Ingelheim entities in</p> <p>15 America at that time?</p> <p>16     MR. GASTWIRTH: Objection to form.</p> <p>17     THE DEPONENT: I was a vice president</p> <p>18 for BI Corporation.</p> <p>19 BY MR. FAUCI:</p> <p>20     Q. Is it okay if we refer to that as BIC?</p> <p>21     <b>A. Sure.</b></p> <p>22     Q. What about a company known as Roxane</p>  |
| <p style="text-align: right;">27</p> <p>1     MR. GASTWIRTH: Objection to form.</p> <p>2     THE DEPONENT: Are you referring to the</p> <p>3 U.S. family or to the worldwide family?</p> <p>4 BY MR. FAUCI:</p> <p>5     Q. To the worldwide family I guess. If I</p> <p>6 -- If I use Boehringer Ingelheim family, I'm</p> <p>7 talking about the whole broad --</p> <p>8     <b>A. The whole shebang.</b></p> <p>9     Q. The whole shebang.</p> <p>10     <b>A. That's fine.</b></p> <p>11     Q. When did your employment begin with any</p> <p>12 Beohringer entity and the Beohringer Ingelheim</p> <p>13 family of companies?</p> <p>14     <b>A. 1973.</b></p> <p>15     Q. With what entity?</p> <p>16     <b>A. Boehringer Ingelheim Canada.</b></p> <p>17     Q. And obviously that's a Canadian</p> <p>18 company?</p> <p>19     <b>A. Correct.</b></p> <p>20     Q. Was there a point in time when you</p> <p>21 transferred to Boehringer Ingelheim's American</p> <p>22 operations?</p>                | <p style="text-align: left;">29</p> <p>1     Laboratories, did you have a position with them?</p> <p>2     MR. GASTWIRTH: Objection to form.</p> <p>3     THE DEPONENT: No.</p> <p>4 BY MR. FAUCI:</p> <p>5     Q. Can you describe in general the</p> <p>6 business of BIPI in the 1994 time frame. By</p> <p>7 business I mean, among other things, what types</p> <p>8 of products was the company marketing or selling?</p> <p>9     <b>A. Again, it was involved in the research;</b></p> <p>10 <b>basic research, clinical research and marketing</b></p> <p>11 <b>sales of human pharmaceuticals. It was a</b></p> <p>12 <b>relatively smaller company in the U.S.</b></p> <p>13 <b>pharmaceutical business. And we were involved in</b></p> <p>14 <b>a couple therapeutic areas at that point,</b></p> <p>15 <b>respiratory medicine predominantly.</b></p> <p>16     Q. Were most of BIPI's products branded</p> <p>17 drugs or generic drugs?</p> <p>18     <b>A. Branded drugs.</b></p> <p>19     Q. Can you describe the business of BIC at</p> <p>20 about the same time, the 1994 time frame.</p> <p>21     <b>A. My understanding of what BIC was was</b></p> <p>22 <b>really as a holding company for the U.S.</b></p> |

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| <p style="text-align: right;">34</p> <p>1 the 1994 time frame?</p> <p>2     <b>A. Yes.</b></p> <p>3     Q. I know I asked you this earlier, but I</p> <p>4 just see it here again. Can you tell me what you</p> <p>5 mean by the term "ethical pharmaceuticals"?</p> <p>6     MR. GASTWIRTH: Objection to form.</p> <p>7 BY MR. FAUCI:</p> <p>8     Q. What you think that means when it says</p> <p>9 head of business unit, ethical pharmaceuticals.</p> <p>10    <b>A. Again, it refers to my responsibility</b></p> <p>11 <b>for the pharmaceutical -- human pharmaceutical --</b></p> <p>12 <b>marketing human pharmaceuticals in the United</b></p> <p>13 <b>States.</b></p> <p>14    Q. And human pharmaceuticals one more</p> <p>15 time, what are those?</p> <p>16    MR. GASTWIRTH: Objection to form.</p> <p>17 Asked and answered.</p> <p>18    THE DEPONENT: Drugs that are used in</p> <p>19 the treatment of diseases affecting human beings.</p> <p>20 BY MR. FAUCI:</p> <p>21    Q. Could those be multi-source products as</p> <p>22 well as branded products?</p>  | <p style="text-align: right;">36</p> <p>1 BY MR. FAUCI:</p> <p>2     Q. So when you worked for BIPI -- And I</p> <p>3 believe you said you also worked for BIC; is that</p> <p>4 correct? You had a position for BIC?</p> <p>5     <b>A. I had -- I had a position within BIC.</b></p> <p>6     Q. During that time frame, approximately</p> <p>7 1994 until the end of 2003, was BIPI within the</p> <p>8 business unit ethical pharmaceuticals?</p> <p>9     <b>A. Not -- Not through 2003.</b></p> <p>10    Q. Approximately what period of time was</p> <p>11 BIPI part of or within the business unit ethical</p> <p>12 pharmaceuticals?</p> <p>13    <b>A. I believe until approximately 2000.</b></p> <p>14    Q. 2000.</p> <p>15       And was Roxane Laboratories included</p> <p>16 within the business unit ethical pharmaceuticals</p> <p>17 for any point within the 1994 to 2003 time frame?</p> <p>18    <b>A. No. It was a separate division.</b></p> <p>19    Q. Did the business unit exist prior to</p> <p>20 1994?</p> <p>21    <b>A. I'm -- I'm not sure what the title</b></p> <p>22 <b>would have been. I'm only familiar with when I</b></p> |
| <p style="text-align: right;">35</p> <p>1     MR. GASTWIRTH: Objection to form.</p> <p>2     THE DEPONENT: Again, in the broad</p> <p>3 definition, yes, it could.</p> <p>4 BY MR. FAUCI:</p> <p>5     Q. Can you tell me which -- which</p> <p>6 businesses were included within the business unit</p> <p>7 ethical pharmaceuticals? I can rephrase that if</p> <p>8 you want.</p> <p>9     <b>A. It depends on the time frame that we're</b></p> <p>10 <b>talking about.</b></p> <p>11    Q. Was BIPI -- At any point in time during</p> <p>12 the time you worked for the BI family of</p> <p>13 companies in America, was BIPI included within</p> <p>14 the business unit ethical pharmaceuticals?</p> <p>15    MR. GASTWIRTH: And I'll just object to</p> <p>16 form. And also, I don't believe that this</p> <p>17 witness has said he's worked for the BI family of</p> <p>18 companies in America. So I think when you talk</p> <p>19 about where the witness has worked, we're just</p> <p>20 going to have to be specific about the companies.</p> <p>21 Okay?</p> <p>22 MR. FAUCI: Sure. That's a good point.</p> | <p style="text-align: right;">37</p> <p>1 <b>came to the United States and was responsible for</b></p> <p>2 <b>the business unit. So I can't recall and I'm not</b></p> <p>3 <b>sure as to whether that acronym was used prior to</b></p> <p>4 <b>1994.</b></p> <p>5     Q. If you look at the last full paragraph</p> <p>6 on the first page of Exhibit 1, can you read that</p> <p>7 paragraph for me.</p> <p>8     MR. GASTWIRTH: You want him to read</p> <p>9 that into the record?</p> <p>10    MR. FAUCI: Please.</p> <p>11    THE DEPONENT: Is that the paragraph</p> <p>12 beginning with "of primary"?</p> <p>13 BY MR. FAUCI:</p> <p>14    Q. That's the paragraph.</p> <p>15    <b>A. Of primary importance to this position</b></p> <p>16 <b>will be the achievement of sales and marketing</b></p> <p>17 <b>objectives under OPINA, the attainment of</b></p> <p>18 <b>consolidated contributions, the maximizing of</b></p> <p>19 <b>synergies of the two leading entities, BIPI and</b></p> <p>20 <b>Roxane, and the coordination of sales and</b></p> <p>21 <b>marketing with medical and research and</b></p> <p>22 <b>development.</b></p>        |

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| <p style="text-align: right;">38</p> <p>1 Q. I believe your testimony earlier was<br/>2 that Roxane was not included within the business<br/>3 unit; is that correct?</p> <p>4 <b>A. I believe I said that it was a separate<br/>5 division.</b></p> <p>6 Q. Can you elaborate what you mean by<br/>7 that.</p> <p>8 <b>A. Roxane was a separate business entity.<br/>9 They had their own budgets, their own plans. Any<br/>10 involvement that I had was really on a strategic<br/>11 level with Roxane.</b></p> <p>12 Q. So is it your testimony that the<br/>13 business unit was just limited to BIPI?</p> <p>14 <b>A. The business unit was primarily BIPI<br/>15 plus a strategic oversight of Roxane, but Roxane<br/>16 had its own management team and it was<br/>17 responsible for the annual budgets, marketing<br/>18 plans, day-to-day operations.</b></p> <p>19 Q. But at least on a strategic level -- Is<br/>20 it fair to say that on a strategic level Roxane<br/>21 sat within the business unit?</p> <p>22 MR. GASTWIRTH: Objection to form.</p>                        | <p style="text-align: right;">40</p> <p>1 you were hired to maximize synergies between the<br/>2 two companies?</p> <p>3 <b>A. I -- Again, I -- Certainly at that<br/>4 point in time my primary focus was on building<br/>5 the branded human pharmaceutical business within<br/>6 BIPI. And certainly one of my -- one of my<br/>7 objectives was to look down the road as to<br/>8 whether there were, in fact, any synergies<br/>9 between the BIPI operation and the Roxane<br/>10 operation.</b></p> <p>11 Q. And down the road were there any<br/>12 synergies that could be exploited or --</p> <p>13 <b>A. Yeah. We --</b></p> <p>14 MR. GASTWIRTH: Objection to form.</p> <p>15 THE DEPONENT: We certainly did look at<br/>16 certain things where we were able to create some<br/>17 synergies, yes.</p> <p>18 BY MR. FAUCI:</p> <p>19 Q. Was this a -- a goal that-- was one of<br/>20 the goals that you were hired for, to look into<br/>21 improving the synergies or exploiting or finding<br/>22 synergies between these companies?</p> |
| <p style="text-align: right;">39</p> <p>1 THE DEPONENT: I don't think I would<br/>2 use the term "sat." They had a separate physical<br/>3 presence, separate facilities. And within the<br/>4 strategic oversight, yes.</p> <p>5 BY MR. FAUCI:</p> <p>6 Q. What is OPINA?</p> <p>7 <b>A. OPINA is an acronym that stood for the<br/>8 optimization of the pharmaceutical business<br/>9 within North America.</b></p> <p>10 Q. The two -- I'm going to read again just<br/>11 from the end of that paragraph. It says, The two<br/>12 leading entities, BIPI and Roxane -- I'm sorry,<br/>13 I'm going to go back a little bit before.</p> <p>14 Of primary importance to this position<br/>15 will be, and then it says among other things, the<br/>16 maximizing of synergies of the two leading<br/>17 entities, BIPI and Roxane. Were there synergies<br/>18 between BIPI and Roxane?</p> <p>19 <b>A. Certainly not -- not at the -- not when<br/>20 I first came in '94. There really were two<br/>21 separate businesses.</b></p> <p>22 Q. Did you view as one of your goals when</p> | <p style="text-align: right;">41</p> <p>1 MR. GASTWIRTH: Objection to form.</p> <p>2 THE DEPONENT: The primary reason why I<br/>3 was brought to the U.S. was really to grow the<br/>4 branded pharmaceutical business within BIPI.</p> <p>5 BY MR. FAUCI:</p> <p>6 Q. That was the primary reason?</p> <p>7 <b>A. Right. Primary reason.</b></p> <p>8 Q. Was coordinating or improving upon the<br/>9 synergies between BIPI and Roxane a reason that<br/>10 you were hired?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. If you turn to the next page of Exhibit<br/>13 2. Do you see where it says basic<br/>14 responsibilities, essential functions?</p> <p>15 <b>A. Yes, I do.</b></p> <p>16 Q. Can you read into the record the third<br/>17 bullet point.</p> <p>18 <b>A. The one that begins with "insures<br/>19 optimization"?</b></p> <p>20 Q. That's correct.</p> <p>21 <b>A. Sure. Insures optimization of<br/>22 performance in the U.S. through the development</b></p>   |

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| <p style="text-align: right;">46</p> <p>1 BY MR. FAUCI:</p> <p>2 Q. Take a moment to familiarize yourself<br/>3 with the document. Whenever you're ready, you<br/>4 can tell me if you recognize this document.</p> <p>5 <b>A. That's fine.</b></p> <p>6 Q. Do you recognize this document?</p> <p>7 <b>A. Not specific. You know, I can't<br/>8 remember it specifically.</b></p> <p>9 Q. Do you see in the upper left-hand<br/>10 corner it says employee bulletin?</p> <p>11 <b>A. Yes, I do.</b></p> <p>12 Q. Which company issued this employee<br/>13 bulletin?</p> <p>14 MR. GASTWIRTH: Objection to form.</p> <p>15 THE DEPONENT: I really don't know.</p> <p>16 BY MR. FAUCI:</p> <p>17 Q. Do you know whether this employee<br/>18 bulletin would have been sent to BIPI employees?</p> <p>19 <b>A. I would assume it was.</b></p> <p>20 Q. Do you know whether it would have been<br/>21 sent to Roxane employees?</p> <p>22 MR. GASTWIRTH: Objection to form.</p>                             | <p style="text-align: right;">48</p> <p>1 Q. Including Roxane?</p> <p>2 <b>A. Including Roxane.</b></p> <p>3 Q. Did you report to Mr. Gerstenberg?</p> <p>4 <b>A. Yes, I did.</b></p> <p>5 Q. Was there anyone in between you and Mr.<br/>6 Gerstenberg in the hierarchy of the corporation<br/>7 or were you pretty much directly reporting to<br/>8 him?</p> <p>9 MR. GASTWIRTH: Objection to form.</p> <p>10 THE DEPONENT: I reported directly to<br/>11 Mr. Gerstenberg.</p> <p>12 BY MR. FAUCI:</p> <p>13 Q. On the first page in the fourth<br/>14 paragraph down, can you just read the first<br/>15 sentence into the record.</p> <p>16 <b>A. Starting with Shelly's duties?</b></p> <p>17 Q. Yes. Thank you.</p> <p>18 <b>A. Shelly's duties will mainly focus on<br/>19 the strategic alignment of our ethical<br/>20 pharmaceutical business in the U.S. and he will<br/>21 be responsible for the operating result for this<br/>22 area.</b></p>   |
| <p style="text-align: right;">47</p> <p>1 THE DEPONENT: It's possible.</p> <p>2 BY MR. FAUCI:</p> <p>3 Q. Do you have any reason to believe it<br/>4 wasn't sent to Roxane employees?</p> <p>5 <b>A. I don't know whether it was or wasn't<br/>6 to be honest with you.</b></p> <p>7 Q. Do you see at the second page that this<br/>8 document was signed by--I might mispronounce his<br/>9 name--Werner Gerstenberg?</p> <p>10 <b>A. Yes. And that's correct by the way.</b></p> <p>11 Q. Thank you.</p> <p>12 Who is Mr. Gerstenberg?</p> <p>13 <b>A. Mr. Gerstenberg was the CEO of<br/>14 Boehringer in the United States.</b></p> <p>15 Q. And by Boehringer in the United States,<br/>16 do you mean BIPI?</p> <p>17 <b>A. I mean all the divisions. The total<br/>18 company.</b></p> <p>19 Q. So was he the CEO of BIC?</p> <p>20 <b>A. You know, again, I don't know what the<br/>21 legal aspects were, but he was basically the<br/>22 overall country manager for the United States.</b></p> | <p style="text-align: right;">49</p> <p>1 Q. What is the strategic alignment of our<br/>2 ethical pharmaceutical business?</p> <p>3 <b>A. Again, I think it is relative to what<br/>4 we have spoken about before. For those products<br/>5 being used for the treatment of diseases in human<br/>6 beings. So for -- again, on the strategic level<br/>7 for products marketed within BIPI and Roxane<br/>8 Laboratories.</b></p> <p>9 Q. In the next sentence it states, As in<br/>10 other countries business will develop in line<br/>11 with the strategy of the strategic business unit<br/>12 (SBU) ethical pharmaceuticals BIGmbH. What is<br/>13 the strategic business unit ethical<br/>14 pharmaceuticals BIGmbH?</p> <p>15 <b>A. Again, on a global basis Boehringer was<br/>16 organized within a business unit framework. So<br/>17 as we've talked about a business unit --<br/>18 strategic business unit in the United States, you<br/>19 can expand that from various operative units<br/>20 around the world into the parent company which<br/>21 had a head of strategic business unit ethical<br/>22 pharmaceuticals.</b></p> |

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| 1     Q. If you'd turn to page two.                     |    | 1 <b>development. So really looking at opportunities</b> |    |
| 2     A. Yeah.  |    | 2 <b>for new business within the Roxane business</b>     |    |
| 3     Q. The first paragraph. The first                 |    | 3 <b>entity.</b>   |    |
| 4     sentence says, In order to create a unified       |    | 4     Q. The employee bulletin states that you           |    |
| 5     management for our ethical pharmaceutical         |    | 5     were the executive vice president of BIPI.         |    |
| 6     business in the U.S., Edward Tupa, vice president |    | 6     A. Correct.  |    |
| 7     sales and marketing, Roxane Laboratories, and     |    | 7     Q. And it also says that you were a vice           |    |
| 8     Fred Duy -- Is that correct?                      |    | 8     president of BIC; is that correct?                 |    |
| 9     A. Correct.                                       |    | 9     A. Correct.  |    |
| 10    Q. -- vice president business planning and        |    | 10    Q. How were these -- Were there different          |    |
| 11    development also of Roxane Laboratories will      |    | 11    job responsibilities as executive vice president   |    |
| 12    report to Shelly.                                 |    | 12    of BIPI and vice president of BIC, or were they    |    |
| 13    A. Will report functionally to Shelly.            |    | 13    the same type of responsibilities?                 |    |
| 14    Q. Will report functionally to Shelly.            |    | 14    MR. GASTWIRTH: Objection to form.                  |    |
| 15    Thank you.  |    | 15    THE DEPONENT: Again, my primary                    |    |
| 16    A. Key word.                                      |    | 16    responsibility was within BIPI. You know, and      |    |
| 17    Q. Who is Mr. Tupa?                               |    | 17    again, I reemphasize that it was directed towards  |    |
| 18    A. Mr. Tupa worked within the Roxane              |    | 18    growing the branded business within BIPI.          |    |
| 19    business entity.                                  |    | 19    BIC really -- I would define it as a               |    |
| 20    Q. Do you know what his responsibilities          |    | 20    holding company. And I was an officer within       |    |
| 21    were at Roxane?                                   |    | 21    BIC, but BIC really didn't have a direct           |    |
| 22    A. Responsible as it says here for sales          |    | 22    business, as we've talked about before.            |    |
|   | 51 |  | 53 |
| 1 <b>and marketing of Roxane products.</b>              |    | 1     BY MR. FAUCI:                                      |    |
| 2     Q. Would that include multi-source                |    | 2     Q. Were you an officer at any other -- any         |    |
| 3     products?   |    | 3     other Boehringer Ingelheim companies besides BIPI  |    |
| 4     A. Yes.   |    | 4     and BIC?   |    |
| 5     Q. Would it include branded generic               |    | 5     MR. GASTWIRTH: Objection to form.                  |    |
| 6     products?   |    | 6     THE DEPONENT: No.                                  |    |
| 7     A. Yes.   |    | 7     BY MR. FAUCI:                                      |    |
| 8     Q. What does it mean that Mr. Tupa                |    | 8     Q. Which company paid your salary?                 |    |
| 9     reported functionally to you?                     |    | 9     A. I believe it was BIPI that paid my              |    |
| 10    A. Basically that means there was a dotted        |    | 10    salary.  |    |
| 11    line responsibility to me and a direct report and |    | 11    Q. Did you receive a salary from BIC?              |    |
| 12    responsibility to the president of Roxane         |    | 12    A. No.   |    |
| 13    Laboratories.                                     |    | 13    Q. Did you sit on any boards of directors          |    |
| 14    Q. A dotted line responsibility. Can you          |    | 14    for Boehringer Ingelheim companies?                |    |
| 15    explain what that means.                          |    | 15    MR. GASTWIRTH: Objection to form.                  |    |
| 16    A. Again, I go back to what I've said             |    | 16    THE DEPONENT: The only board -- The                |    |
| 17    before. I really had a strategic involvement      |    | 17    only direct position I believe I had was with --   |    |
| 18    with Roxane, not an operational day-to-day        |    | 18    was with Roxane Laboratories.                      |    |
| 19    involvement.                                      |    | 19    BY MR. FAUCI:                                      |    |
| 20    Q. And Fred Duy, can you tell me a little         |    | 20    Q. Do you know approximately how long you          |    |
| 21    bit more about his responsibilities.              |    | 21    served on the Roxane board?                        |    |
| 22    A. Basically, as it says here, business           |    | 22    A. Off the top of my head I can't                  |    |

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| <p style="text-align: right;">54</p> <p>1 remember. It may be a few years, but I can't<br/>2 remember specifically.</p> <p>3 Q. Do you remember anyone else who served<br/>4 on the board?</p> <p>5 A. Of?</p> <p>6 Q. Of Roxane.</p> <p>7 A. Certainly Mr. Gerstenberg.</p> <p>8 Q. Can you remember anyone else?</p> <p>9 A. I'm not -- Again, it was not an active<br/>10 board per se. I think it was more of a legal --<br/>11 legal entity.</p> <p>12 Q. What do you mean it wasn't an active<br/>13 board?</p> <p>14 A. There -- Again, very -- You know, it's<br/>15 a number of years ago, so it's hard for me to<br/>16 remember, but as far as I remember there were<br/>17 very, very infrequent meetings and it was more to<br/>18 form than anything else. It wasn't operational<br/>19 in other words.</p> <p>20 Q. Do you recall any meetings of the<br/>21 Roxane board of directors?</p> <p>22 A. Not specific.</p>  | <p style="text-align: right;">56</p> <p>1 board meetings, did any of your -- At any of the<br/>2 points in time when you were at the meeting do<br/>3 you have any recollection as to whether or not<br/>4 Roxane business was ever discussed?</p> <p>5 MR. GASTWIRTH: Objection to form.</p> <p>6 THE DEPONENT: Yes, I do. Again, on<br/>7 occasion if it was a topic on the agenda.</p> <p>8 BY MR. FAUCI:</p> <p>9 Q. Thank you.</p> <p>10 I'm going to show you what the court<br/>11 reporter has marked as Exhibit I believe 4.<br/>12 (Exhibit Berkle 004 was marked.)</p> <p>13 BY MR. FAUCI:</p> <p>14 Q. Please take a minute to look at this<br/>15 document. Feel free to read it, but I'll tell<br/>16 you in advance I'm only going to be asking you<br/>17 questions about a narrow subsection of it. So --</p> <p>18 A. Sure.</p> <p>19 Q. -- you can look at it with that in mind<br/>20 and read it more if you need to later I guess.</p> <p>21 The page I'm going to be asking you<br/>22 questions about is marked BIC Juris 0236 on the</p> |
| <p style="text-align: right;">55</p> <p>1 Q. And did you serve on any other boards<br/>2 for Boehringer Ingelheim companies beyond Roxane?</p> <p>3 A. No.</p> <p>4 Q. Do you know if BIC and/or BIPI had<br/>5 boards of directors?</p> <p>6 A. Yes, they did.</p> <p>7 Q. Did you ever attend meetings of the BIC<br/>8 and BIPI boards of directors?</p> <p>9 MR. GASTWIRTH: Objection to form.</p> <p>10 THE DEPONENT: Usually only partly<br/>11 during the times when the human pharmaceutical<br/>12 business would have been discussed, but not as a<br/>13 -- not normally for the whole complete meeting.</p> <p>14 BY MR. FAUCI:</p> <p>15 Q. I'm going to -- When you did attend a<br/>16 BIC and/or BIPI board meeting, would Roxane<br/>17 business be discussed?</p> <p>18 A. Again, you know, there was always an<br/>19 agenda set. So it may have been on occasion,<br/>20 but, you know, I can't specifically say yes or no<br/>21 as I wasn't a board member, so...</p> <p>22 Q. But when you presented or talked at the</p> | <p style="text-align: right;">57</p> <p>1 bottom right-hand corner.</p> <p>2 Do you recognize this document?</p> <p>3 A. Not specifically.</p> <p>4 Q. Do you see on the first page it says,<br/>5 Minutes of the meeting of board of directors,<br/>6 Boehringer Ingelheim Corporation, October 28,<br/>7 1998?</p> <p>8 A. Yes, I do.</p> <p>9 Q. I'm going to direct your attention to<br/>10 BIC Juris 0236.</p> <p>11 A. Okay.</p> <p>12 Q. Can you please read the first sentence<br/>13 from the paragraph starting, Mr. Berkle.</p> <p>14 A. Mr. Berkle explained the reorganization<br/>15 of the strategic business unit ethical<br/>16 pharmaceuticals advising that it now has two<br/>17 components, one being generic drugs and the other<br/>18 branded generic drugs.</p> <p>19 Q. Do you agree that the strategic<br/>20 business unit ethical pharmaceuticals had two<br/>21 components, one being generic drugs and the other<br/>22 branded generic drugs?</p>  |

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| <p style="text-align: right;">58</p> <p>1     <b>A. I -- A slight variation of that. I</b><br/> 2     <b>think this refers to the Roxane component of the</b><br/> 3     <b>strategic business unit. It doesn't refer to the</b><br/> 4     <b>BIPi component, which is purely branded.</b></p> <p>5     Q. So there was --</p> <p>6     <b>A. Really three.</b></p> <p>7     Q. I'm sorry. What do you mean by really<br/>8     three?</p> <p>9     <b>A. Again, this is -- this refers only to</b><br/>10     <b>Roxane Laboratories.</b></p> <p>11     Q. Okay.</p> <p>12     <b>A. Okay? That's --</b></p> <p>13     Q. And so there was a Roxane Laboratories<br/>14     component of the business unit?</p> <p>15     <b>A. Yes. According to -- According to this</b><br/>16     <b>anyway definition.</b></p> <p>17     Q. The third sentence down in the same<br/>18     paragraph it says, Sales and marketing for<br/>19     branded generics will report to BIPi<br/>20     counterparts. Are branded generics, are those<br/>21     Roxane products?</p> <p>22     <b>A. Yes, they were.</b></p>  | <p style="text-align: right;">60</p> <p>1     <b>And as I think we talked about</b><br/> 2     <b>previously in the document, just slightly above</b><br/> 3     <b>that particular line, there's two components of</b><br/> 4     <b>the Roxane business, multi-source generic and</b><br/> 5     <b>branded generic.</b></p> <p>6     So for the branded generic products<br/>7     there was only a few of them. Those people<br/>8     within the Roxane business entity did report<br/>9     functionally to designated people within the BIPi<br/>10     organization, but the day-to-day operations were<br/>11     still conducted by Roxane people.</p> <p>12     Q. Okay. The last sentence of this same<br/>13     paragraph reads, The contracting and pricing<br/>14     departments will be combined for ROI and BIPi.<br/>15     Do you recall if this -- if this happened?</p> <p>16     <b>A. This happened really from the</b><br/> 17     <b>administrative perspective, so that there was --</b><br/> 18     <b>you know, the actual establishment of pricing or</b><br/> 19     <b>contracting was done by individuals within the</b><br/> 20     <b>Roxane business entity, but the processing of the</b><br/> 21     <b>administration, the submission of prices, were</b><br/> 22     <b>done by a central unit within -- within BIPi that</b></p> |
| <p style="text-align: right;">59</p> <p>1     Q. Why are Roxane sales and marketing<br/>2     reporting to their BIPi counterparts?</p> <p>3     <b>MR. GASTWIRTH: Objection to form.</b></p> <p>4     That's not what this document says.</p> <p>5     <b>BY MR. FAUCI:</b></p> <p>6     Q. Well, I can -- Let's just look at the<br/>7     sentence. It says, Sales and marketing for<br/>8     branded generics will report to BIPi<br/>9     counterparts. Can you tell me what -- what you<br/>10    think that sentence means?</p> <p>11     <b>A. Well, I can tell you what the situation</b><br/>12     <b>actually was.</b></p> <p>13     Q. Okay. That's --</p> <p>14     <b>A. Okay. And -- And again, because I</b><br/>15     <b>certainly can't recall having seen this document,</b><br/>16     <b>and I certainly didn't write this document.</b></p> <p>17     The situation was that there were<br/>18     people within the Roxane organization, within the<br/>19     Roxane business unit, business entity that had<br/>20     responsibility for the day-to-day operations and<br/>21     the various functions, including marketing and<br/>22     sales.</p> | <p style="text-align: right;">61</p> <p>1     <b>had that responsibility for both BIPi and Roxane.</b></p> <p>2     Q. Why were they combined in this way?</p> <p>3     <b>A. Again, it was -- it was a synergistic</b><br/>4     <b>decision in the sense of rather than having two</b><br/>5     <b>separate organizations making submissions it made</b><br/>6     <b>sense to -- from an efficiency point of view to</b><br/>7     <b>combine that.</b></p> <p>8     Q. And submissions to who?</p> <p>9     <b>A. To wherever, you know, pricing or</b><br/>10     <b>contract -- contracts had to be submitted to.</b></p> <p>11     <b>MR. FAUCI: I think it's a good time</b><br/>12     <b>for a quick break.</b></p> <p>13     <b>THE DEPONENT: Sure.</b></p> <p>14     <b>THE VIDEOGRAPHER: It's 9:59. We're</b><br/>15     going off the record.</p> <p>16     (Short break was taken.)</p> <p>17     (Exhibit Berkle 005 was marked.)</p> <p>18     <b>THE VIDEOGRAPHER: It's 10:24. We're</b><br/>19     back on the record.</p> <p>20     <b>BY MR. FAUCI:</b></p> <p>21     Q. Welcome back, Mr. Berkle.</p> <p>22     <b>A. Thank you.</b></p>  |

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| <p style="text-align: right;">62</p> <p>1 Q. I'm going to hand you a document that's<br/>2 been marked by the court reporter as Exhibit 5.<br/>3 Can you take a moment to look at it and I'll have<br/>4 a few questions for you.</p> <p>5 MR. GASTWIRTH: I'll just take a copy.</p> <p>6 MR. FAUCI: Oh, I'm sorry.</p> <p>7 MR. GASTWIRTH: That's okay. Thank<br/>8 you.</p> <p>9 THE DEPONENT: Okay.</p> <p>10 BY MR. FAUCI:</p> <p>11 Q. Do you recognize this document?</p> <p>12 A. No, I do not.</p> <p>13 Q. Does it appear to be on Roxane<br/>14 letterhead?</p> <p>15 A. Yes, it does.</p> <p>16 Q. Do you see that the document is signed<br/>17 by Gerald Wojta? Am I pronouncing his name<br/>18 correctly?</p> <p>19 A. Wojta.</p> <p>20 Q. Wojta. Do you see that it's signed by<br/>21 Mr. Wojta?</p> <p>22 A. Yes, I do.</p>   | <p style="text-align: right;">64</p> <p>1 the marketing, sales and business development<br/>2 departments at Roxane Laboratories, Inc. and<br/>3 Boehringer Ingelheim Pharmaceuticals, Inc.</p> <p>4 Q. Do you recall an internal study<br/>5 regarding the organization of the business unit<br/>6 in the fall of 1995?</p> <p>7 A. I can't recall specifics of it to be<br/>8 honest. I knew there was some -- Certainly I'm<br/>9 aware there was something going on, but I can't -<br/>10 - you know, I don't remember the specifics per<br/>11 se.</p> <p>12 Q. The third paragraph states that the<br/>13 Roxane marketing and sales departments will be<br/>14 led by Mr. Edward Tupa who currently has this<br/>15 responsibility. Ed will also assume<br/>16 responsibility for the BU sales training, BU<br/>17 trade relations and BU contract functions. What<br/>18 is BU sales training?</p> <p>19 A. You know --</p> <p>20 MR. GASTWIRTH: Objection to form.</p> <p>21 THE DEPONENT: You know, BU would stand<br/>22 for business unit I -- I think. Again, I don't</p>  |
| <p style="text-align: right;">63</p> <p>1 Q. Who is Mr. Wojta?</p> <p>2 A. Mr. Wojta, as appears below his<br/>3 signature, was president of Roxane Laboratories.</p> <p>4 Q. Did he work for other companies in the<br/>5 Boehringer Ingelheim family?</p> <p>6 A. No.</p> <p>7 Q. Do you -- It says this letter, the<br/>8 first thing which appears under the date is dear<br/>9 fellow employees. Do you suspect this letter --</p> <p>10 Would this letter have gone out to Roxane<br/>11 employees?</p> <p>12 MR. GASTWIRTH: Objection to form.</p> <p>13 THE DEPONENT: Again, I -- you know, I<br/>14 don't know for sure, but I would assume that's<br/>15 probably where it went.</p> <p>16 BY MR. FAUCI:</p> <p>17 Q. Can you read the first sentence<br/>18 beginning with the word "following."</p> <p>19 A. Following an internal study which we<br/>20 began last fall of the U.S. business unit ethical<br/>21 pharmaceuticals we are now prepared to implement<br/>22 plans for a restructured business unit, including</p> | <p style="text-align: right;">65</p> <p>1 recall, you know, this particular memo. These<br/>2 functional responsibilities, sales training trade<br/>3 relations, really would refer to those functions<br/>4 within the Roxane organization.</p> <p>5 BY MR. FAUCI:</p> <p>6 Q. Did the BU have a -- a single sales<br/>7 training staff that was responsible for both BIPI<br/>8 and Roxane?</p> <p>9 A. No.</p> <p>10 Q. And so BU trade relations, can you --<br/>11 can you tell me what that means?</p> <p>12 A. Again, you know, I -- I can't say for<br/>13 sure, but I believe that really this is an error,<br/>14 because the trade relations -- as I said before,<br/>15 trade relations, sales training and contracts,<br/>16 this really would refer to those functions within<br/>17 the Roxane organization only; therefore, really<br/>18 the BU is an incorrect designation from my<br/>19 perspective.</p> <p>20 MR. GASTWIRTH: And I'm just going to<br/>21 object on the record to the extent that you're<br/>22 asking this witness questions about a document</p> |

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| <p style="text-align: right;">74</p> <p>1       MR. GASTWIRTH: I'm -- And just to<br/>2 respond to that commentary by counsel, I'm not<br/>3 instructing the witness not to answer these<br/>4 questions, I'm just objecting to the extent that<br/>5 questions are being asked about documents that<br/>6 were not provided to the witness about his<br/>7 understanding of terms or phrases within<br/>8 documents he's never seen before.</p> <p>9       MR. BREEN: You're giving this witness<br/>10 the answer. It's improper and I object to it.</p> <p>11      MR. GASTWIRTH: Okay.</p> <p>12      THE DEPONENT: Could you repeat the<br/>13 question.</p> <p>14     BY MR. FAUCI:</p> <p>15      Q. Sure. The language I read, the bolded<br/>16 language in paragraph three --</p> <p>17     <b>A. Uh-huh. Right.</b></p> <p>18      Q. -- does that language -- do you<br/>19 understand -- can you tell me what you understand<br/>20 that language to mean?</p> <p>21     <b>A. Yeah. How do I -- How do I answer<br/>22 that? You know, I read it. I under -- you know,</b></p>                                | <p style="text-align: right;">76</p> <p>1 made a larger profit margin when he or she<br/>2 dispensed a Roxane product?</p> <p>3       MR. GASTWIRTH: Objection to form.</p> <p>4       THE DEPONENT: As I said before, I was<br/>5 not involved in the day-to-day operations of<br/>6 Roxane or in basically how they set their prices<br/>7 in general or how they marketed their generic<br/>8 drugs. I really did not get involved. So I am<br/>9 not aware whether they did or didn't do the type<br/>10 of thing that you said.</p> <p>11 BY MR. FAUCI:</p> <p>12      Q. And I'll ask a similar question. Do<br/>13 you recall if Roxane ever promoted the profit<br/>14 margin available on its products as a reason for<br/>15 a pharmacist to dispense the product?</p> <p>16      MR. GASTWIRTH: Objection.</p> <p>17      THE DEPONENT: I'm not aware of that.</p> <p>18 BY MR. FAUCI:</p> <p>19      Q. Are you familiar with the<br/>20 pharmaceutical product known as Ipratropium<br/>21 Bromide?</p> <p>22     <b>A. Yes, I am.</b></p>                    |
| <p style="text-align: right;">75</p> <p>1     <b>based on what it says here -- You know, I'm just<br/>2 going to repeat what it says. It says that the -<br/>3 - a pharmacy is reimbursed by the payer on a<br/>4 formula AWP less a defined percentage plus a<br/>5 dispensing fee. So ultimately the money that<br/>6 goes to the pharmacy.</b></p> <p>7     <b>Now, other than reading it and taking<br/>8 it exactly what it says, I don't know whether<br/>9 it's right or wrong or -- you know, I certainly<br/>10 don't offer any other opinion beyond what the<br/>11 actual words say.</b></p> <p>12      Q. Did Roxane ever set AWPs for its<br/>13 products to ensure that a pharmacist made a<br/>14 larger profit margin when he or she dispensed the<br/>15 Roxane product?</p> <p>16      MR. GASTWIRTH: Objection. Can I hear<br/>17 that question back for a second, please.</p> <p>18      THE COURT REPORTER: Actually, Counsel,<br/>19 can you repeat that.</p> <p>20 BY MR. FAUCI:</p> <p>21      Q. Sure. Do you know if Roxane ever set<br/>22 AWPs for its products to ensure that a pharmacist</p> | <p style="text-align: right;">77</p> <p>1     <b>Q. What is that?</b></p> <p>2     <b>A. Ipratropium Bromide is a human<br/>3 pharmaceutical product that was originated within<br/>4 Boehringer research and marketed as an original<br/>5 brand named Atrovent marketed by BIPI in the<br/>6 United States. It is used in the treatment of<br/>7 chronic obstructive lung disease.</b></p> <p>8     <b>Q. Is Atrovent a BIPI product?</b></p> <p>9     <b>A. Yes, it is.</b></p> <p>10    <b>Q. And is it fair to characterize Atrovent<br/>11 as a branded product?</b></p> <p>12    <b>A. Yes, it is.</b></p> <p>13    <b>Q. And Ipratropium Bromide, is it fair to<br/>14 say that's a generic equivalent of Atrovent?</b></p> <p>15    <b>A. Yes, it is.</b></p> <p>16    <b>Q. Were you involved in any way in making<br/>17 decisions about the marketing or pricing of<br/>18 Ipratropium Bromide?</b></p> <p>19      MR. GASTWIRTH: Objection to form.</p> <p>20      THE DEPONENT: You're talking about the<br/>21 generic version?</p> <p>22 BY MR. FAUCI:</p> |

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| <p style="text-align: right;">78</p> <p>1 Q. Yes. When I -- When I refer to<br/>2 Ipratropium Bromide, I'll be referring to the<br/>3 generic version.</p> <p>4 <b>A. Yeah. I was not involved in the<br/>5 marketing or pricing of Ipratropium Bromide.</b></p> <p>6 Q. Did you have any involvement at all<br/>7 with Ipratropium Bromide?</p> <p>8 <b>A. Yes, I did. In the sense that we were<br/>9 sister companies and there was discussions<br/>10 between the two companies relative to the<br/>11 experience that BIPI had in the marketing with<br/>12 Atrovent.</b></p> <p>13 Q. Was there any coordination between the<br/>14 marketing of Atrovent and Ipratropium Bromide?</p> <p>15 MR. GASTWIRTH: Objection to form.</p> <p>16 THE DEPONENT: Define coordination.</p> <p>17 BY MR. FAUCI:</p> <p>18 Q. Was there any -- Was there any link how<br/>19 Atrovent was marketed and Ipratropium was<br/>20 marketed?</p> <p>21 MR. GASTWIRTH: Objection to form.</p> <p>22 THE DEPONENT: Not -- Not in terms of</p> | <p style="text-align: right;">80</p> <p>1 signature block?</p> <p>2 <b>A. Yes, I do.</b></p> <p>3 Q. Who is Dave Townley?</p> <p>4 <b>A. David worked in the parent company in<br/>5 Germany.</b></p> <p>6 Q. Which company?</p> <p>7 <b>A. BIGmbH.</b></p> <p>8 Q. Who is Ian Mills?</p> <p>9 <b>A. Ian Mills worked within BIPI. He was<br/>10 vice president of marketing and sales reporting<br/>11 to me.</b></p> <p>12 Q. And the other two recipients we've<br/>13 talked about before. Mr. Tupa, who is he?</p> <p>14 <b>A. Ed was head of marketing sales within<br/>15 the Roxane organization.</b></p> <p>16 Q. If you look at the first bullet point<br/>17 it says Atrovent UDV exclusively expires 30/9/96.<br/>18 What is UDV?</p> <p>19 <b>A. Unit dose vials.</b></p> <p>20 Q. And Atrovent exclusively, that means<br/>21 the patent was expiring?</p> <p>22 <b>A. Correct.</b></p>   |
| <p style="text-align: right;">79</p> <p>1 how they were marketed. The only discussion was<br/>2 that, you know -- when Atrovent was approaching<br/>3 the end of its patent term, there was discussion<br/>4 with the sister company Roxane in terms of their<br/>5 launching of a generic version of Atrovent.</p> <p>6 BY MR. FAUCI:</p> <p>7 Q. I'm going to show you a document the<br/>8 court reporter marked as Exhibit 7.<br/>(Exhibit Berkle 007 was marked.)</p> <p>10 BY MR. FAUCI:</p> <p>11 Q. Take a moment to familiarize yourself<br/>12 with it.</p> <p>13 <b>A. Sure.</b></p> <p>14 <b>Okay.</b></p> <p>15 Q. Do you recognize this document?</p> <p>16 <b>A. Not specifically.</b></p> <p>17 Q. Do you see on the second page that<br/>18 you're copied on this document along with D.<br/>19 Marshall and N. Valentin?</p> <p>20 <b>A. Yes, I do.</b></p> <p>21 Q. It appears this document was authored<br/>22 by Dave Townley. Do you see his name in the</p>   | <p style="text-align: right;">81</p> <p>1 Q. And it was going to be subject to<br/>2 generic competition?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. Further down the document says Roxane<br/>5 will launch preemptive, unbranded Ipratropium<br/>6 Bromide UDV 1/7/96.</p> <p>7 Was the launch of Ipratropium Bromide<br/>8 timed to coincide with the expiration of<br/>9 exclusivity for Atrovent?</p> <p>10 MR. GASTWIRTH: Objection to form.</p> <p>11 THE DEPONENT: Again, this is a memo.<br/>12 You know, obviously I don't remember specifics to<br/>13 this memo. So the concept of launching<br/>14 preemptively is correct. The timing I'm not sure<br/>15 of.</p> <p>16 BY MR. FAUCI:</p> <p>17 Q. What does it mean to launch<br/>18 preemptively?</p> <p>19 <b>A. Again, and I think some of these points<br/>20 are made in this memo, it was anticipated that<br/>21 multiple companies would be ultimately launching<br/>22 generic versions of Ipratropium Bromide UDVs.</b></p> |

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| <p style="text-align: right;">82</p> <p>1 And the thought process was that Roxane as a<br/>2 sister company to Boehringer would, in fact, also<br/>3 market sell their generic version of Ipratropium,<br/>4 and that strategically we would have Roxane<br/>5 launch their generic version onto the market<br/>6 prior to other companies being able to come onto<br/>7 the marketplace. So that was reference to the<br/>8 preemptive.</p> <p>9 Q. Who is Dey Labs?</p> <p>10 A. Dey Labs was a competitive company<br/>11 within the generic marketplace.</p> <p>12 Q. Were they a competitor of Roxane?</p> <p>13 A. Yes, they were.</p> <p>14 Q. Did they compete with BIPI?</p> <p>15 A. Not -- Not -- No. They did not have<br/>16 drugs that competed that -- that point<br/>17 specifically with BIPI.</p> <p>18 Q. It says the fourth bullet point down,<br/>19 Dey will be able to offer a full UDV package from<br/>20 this date, i.e., IPBr plus Albuterol plus<br/>21 Cromoglycate. What are those products?</p> <p>22 A. Well, IPBr is Ipratropium. And the</p> | <p style="text-align: right;">84</p> <p>1 is that Roxane, as other generic companies, their<br/>2 goal was to have a breadth of product offers<br/>3 within any therapeutic area.</p> <p>4 So ultimately Roxane was hoping to<br/>5 launch not only Iprop -- Ipratropium, but other<br/>6 respiratory products, such as Albuterol, such as<br/>7 Cromoglycate.</p> <p>8 Q. Why were they looking to launch other<br/>9 respiratory products?</p> <p>10 A. Well, again, just, you know, trying to<br/>11 cover the gambit of therapeutic treatments for<br/>12 these diseases and, therefore -- you know,<br/>13 basically building their business.</p> <p>14 Q. Would it be an advantage in their<br/>15 marketing of Ipratropium Bromide if they had<br/>16 other respiratory products available?</p> <p>17 MR. GASTWIRTH: Objection to form.</p> <p>18 THE DEPONENT: I -- You know, I really<br/>19 can't say that. I don't know.</p> <p>20 BY MR. FAUCI:</p> <p>21 Q. Why are you copied on this e-mail?</p> <p>22 A. Why am I copied on this e-mail?</p>                                     |
| <p style="text-align: right;">83</p> <p>1 Albuterol and Cromoglycate are other respirat --<br/>2 products used in the treatment of respiratory<br/>3 disease.</p> <p>4 Q. Would it be advantageous today that<br/>5 they had other products, other respiratory<br/>6 products in addition to Ipratropium?</p> <p>7 MR. GASTWIRTH: Objection to form.</p> <p>8 THE DEPONENT: You'd have to ask Dey<br/>9 Labs that.</p> <p>10 BY MR. FAUCI:</p> <p>11 Q. The next -- The next bullet point down<br/>12 it says, Roxane Albuterol and Cromoglycate UDV<br/>13 developments cannot be introduced until Q3/98,<br/>14 thus leaving a two-year, quote, gap, quote, where<br/>15 only IPBr, Ipratropium, unit dose vials can be<br/>16 offered.</p> <p>17 Was it a concern of yours that Roxane<br/>18 did not have Albuterol and Cromoglycate UDV<br/>19 products for a two-year gap?</p> <p>20 A. Was it a concern of mine? I think --</p> <p>21 You know, I could only reference this memo, which<br/>22 is not my memo, which -- basically what it means</p>                     | <p style="text-align: right;">85</p> <p>1 Because basically I was heading the<br/>2 pharmaceutical business.</p> <p>3 Q. The pharmaceutical business for who?</p> <p>4 A. For BIPI with a strategic involvement<br/>5 for Roxane, and again BIPI not only -- one of the<br/>6 leading therapeutic areas of Boehringer worldwide<br/>7 was respiratory disease.</p> <p>8 Q. Was this memo confidential?</p> <p>9 A. To whom?</p> <p>10 Q. To people outside of BIPI and Roxane.<br/>11 Was it expected that this memo would stay within<br/>12 those two companies?</p> <p>13 A. I don't think there's any huge<br/>14 confidentiality to it. I think it was intended<br/>15 for those people in the business unit who were<br/>16 involved with marketing of respiratory drugs.</p> <p>17 So, you know, I don't know if it would be of<br/>18 interest to anybody else.</p> <p>19 MR. GASTWIRTH: I'll just state on the<br/>20 record that the document appears to have been<br/>21 Bates labeled confidential attorneys' eyes only.<br/>22 So with respect to having this document produced</p> |

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| <p style="text-align: right;">122</p> <p>1     <b>A. No.</b></p> <p>2     Q. Who -- Have you seen this document?</p> <p>3     <b>A. I can't recall.</b></p> <p>4     Q. Do you have any reason to believe that</p> <p>5     you didn't see it?</p> <p>6     <b>A. I can't answer that yes or no.</b></p> <p>7     Q. Is it -- This is a marketing plan for</p> <p>8     Ipratropium Bromide; is that correct?</p> <p>9     <b>A. It appears to be.</b></p> <p>10    Q. Is it likely you would have been sent a</p> <p>11    copy of a document like that?</p> <p>12    MR. GASTWIRTH: Objection to form.</p> <p>13    THE DEPONENT: It's possible.</p> <p>14 BY MR. FAUCI:</p> <p>15    Q. I'm going to direct your attention to</p> <p>16    page five. It's the internal page numbers.</p> <p>17    There's a bunch of Bates numbers below, but --</p> <p>18    <b>A. Right. Yeah.</b></p> <p>19    Q. It says pricing. Do you see that?</p> <p>20    <b>A. Yes, I do.</b></p> <p>21    Q. Can you read me the first two</p> <p>22    sentences.</p>   | <p style="text-align: right;">124</p> <p>1     is to create an attractive spread between WAC and</p> <p>2     AWP encouraging accounts to convert from the</p> <p>3     brand name to the generic product as quickly as</p> <p>4     possible.</p> <p>5       Do you have any reason to dispute that</p> <p>6     the purpose of the pricing structure was as it is</p> <p>7     stated in the marketing plan; i.e., to create an</p> <p>8     attractive spread between the WAC and AWP</p> <p>9     encouraging accounts to convert from the brand</p> <p>10    name to the generic product as quickly as</p> <p>11    possible?</p> <p>12    MR. GASTWIRTH: Objection to form.</p> <p>13    THE DEPONENT: Yeah. The only comment</p> <p>14 I'll make to that is that, you know, certainly my</p> <p>15 understanding was -- on pricing for Roxane was to</p> <p>16 ensure that they were competitive. Beyond that</p> <p>17 I'm not prepared to make any comments.</p> <p>18 BY MR. FAUCI:</p> <p>19    Q. Would you have approved of this plan</p> <p>20 had you seen that the stated reason for the</p> <p>21 pricing structure was to create an attractive</p> <p>22 spread between WAC and AWP?</p> |
| <p style="text-align: right;">123</p> <p>1     <b>A. Under pricing?</b></p> <p>2     Q. Yes.</p> <p>3     <b>A. Pricing of the IB UDV will need to</b></p> <p>4     <b>follow the traditional parameters of a generic</b></p> <p>5     <b>product. Specifically AWP will be brand less 10</b></p> <p>6     <b>percent or \$44.06 for the 25-count package. WAC</b></p> <p>7     <b>will be AWP less 40 percent or \$26.44 for the 25-</b></p> <p>8     <b>count package.</b></p> <p>9     Q. Is that -- Is it your under -- In your</p> <p>10 understanding is it typical that the AWP for a</p> <p>11 generic product would be AW -- would be brand</p> <p>12 less 10 percent?</p> <p>13    MR. GASTWIRTH: Objection to form.</p> <p>14    THE DEPONENT: Again, my familiarity</p> <p>15 was primarily with the branded products where we</p> <p>16 set a wholesale acquisition cost and that I</p> <p>17 cannot tell you what precisely is common relative</p> <p>18 to AWP which from my perspective was familiar --</p> <p>19 was more associated with generic drugs.</p> <p>20 BY MR. FAUCI:</p> <p>21    Q. The next sentence, The reason this type</p> <p>22    of price structure is used for a generic launch</p> | <p style="text-align: right;">125</p> <p>1     MR. GASTWIRTH: Objection to form.</p> <p>2     THE DEPONENT: I'm not going to</p> <p>3     speculate on that. In general I've said to you</p> <p>4 before that I really did not get involved in the</p> <p>5 details of pricing for the generic products</p> <p>6 within the Roxane line.</p> <p>7 BY MR. FAUCI:</p> <p>8     Q. I think we're going to move on from</p> <p>9 that document.</p> <p>10    <b>A. Okay.</b></p> <p>11    MR. FAUCI: It is 11:57. I'm happy to</p> <p>12 keep going. Lunch isn't here.</p> <p>13    MR. GASTWIRTH: That would be fine.</p> <p>14    MR. FAUCI: Stop whenever people are</p> <p>15 ready.</p> <p>16 BY MR. FAUCI:</p> <p>17    Q. I'm going to show you a document the</p> <p>18 court reporter will mark as Exhibit 15.</p> <p>19       (Exhibit Berkley 015 was marked.)</p> <p>20 BY MR. FAUCI:</p> <p>21    Q. Please take a moment.</p> <p>22    <b>A. Okay.</b></p>   |

33 (Pages 126 to 129)

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| <p>126</p> <p>1 Q. Have you seen this document?</p> <p>2 A. I don't recall.</p> <p>3 Q. It looks like an early version of an e-</p> <p>4 mail.</p> <p>5 A. You're right.</p> <p>6 Q. It seems to be from Jim King. Regards,</p> <p>7 Jim King. Do you see that at the bottom?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Who's Jim king?</p> <p>10 A. Jim King was vice president of sales</p> <p>11 reporting to me.</p> <p>12 Q. For BIPI?</p> <p>13 A. For BIPI. For BIPI, sorry.</p> <p>14 Q. Did he have responsibility for Roxane</p> <p>15 as well?</p> <p>16 A. No, he did not.</p> <p>17 Q. In the "to" line it's to a bunch of</p> <p>18 different groups it seems; all RDs. What does</p> <p>19 that mean?</p> <p>20 A. Regional directors that would have been</p> <p>21 reporting directly to Jim King.</p> <p>22 Q. Would they be in the trade relations</p> | <p>128</p> <p>1 see that?</p> <p>2 A. Yes, I do.</p> <p>3 Q. I'm going to look at the second</p> <p>4 paragraph.</p> <p>5 A. Uh-huh.</p> <p>6 Q. Just so you are clear on sales</p> <p>7 commissions, if Roxane's Ipratropium Bromide is</p> <p>8 sold or if an Atrovent solution is sold, you get</p> <p>9 credit for it. It is in the corporation's best</p> <p>10 interest to shift business to Roxane as quickly</p> <p>11 as possible.</p> <p>12 Did sales personnel -- BIPI sales</p> <p>13 personnel get credit for sales whether or not</p> <p>14 they were BIPI products or Roxane products?</p> <p>15 MR. GASTWIRTH: Objection to form.</p> <p>16 THE DEPONENT: I can only --</p> <p>17 BY MR. FAUCI:</p> <p>18 Q. Go ahead.</p> <p>19 A. I can only say according to this they</p> <p>20 did.</p> <p>21 Q. Do you have any reason to believe they</p> <p>22 didn't?</p>  |
| <p>127</p> <p>1 group?</p> <p>2 A. No.</p> <p>3 Q. What -- What group would they be in?</p> <p>4 Where do they fall in the company?</p> <p>5 A. What's called the sales group.</p> <p>6 Basically responsible for medical representatives</p> <p>7 calling on physicians.</p> <p>8 Q. And those people, would they be BIPI</p> <p>9 employees?</p> <p>10 A. Yes, they would.</p> <p>11 Q. And they would be responsible just for</p> <p>12 BIPI products?</p> <p>13 A. Yes.</p> <p>14 Q. What about DMs?</p> <p>15 A. DM stands for direct managers and they</p> <p>16 report to the regional directors.</p> <p>17 Q. And then reps?</p> <p>18 A. Reps are individual sales reps</p> <p>19 reporting to the DMs.</p> <p>20 Q. And all these people are BIPI?</p> <p>21 A. Yes, they are.</p> <p>22 Q. Subject, Atrovent IB solution. Do you</p>                    | <p>129</p> <p>1 A. No, I don't.</p> <p>2 Q. Had you seen this e-mail or known of</p> <p>3 this, would you have approved of BIPI people</p> <p>4 getting credit for Roxane sales?</p> <p>5 A. I would have been aware of it and I</p> <p>6 would have approved it.</p> <p>7 Q. You would have approved it?</p> <p>8 A. Yeah. The reason being is that -- and</p> <p>9 again, I'm making certain assumptions here, that</p> <p>10 this was during only -- this was only for a</p> <p>11 period of time. Okay. And this was the period</p> <p>12 of time when Roxane was preemptively launching</p> <p>13 Ipratropium Bromide.</p> <p>14 Okay. So the agreement was that</p> <p>15 Boehringer medical reps would still be promoting</p> <p>16 the compound to physicians and to hospital</p> <p>17 physicians, therefore, trying to grow the market</p> <p>18 penetration of Ipratropium within the respiratory</p> <p>19 marketplace.</p> <p>20 And because they were putting an effort</p> <p>21 but allowing -- but allowing Roxane to sell a</p> <p>22 generic version during that exclusive period that</p> |

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| <p style="text-align: right;">182</p> <p>1 BY MR. FAUCI:</p> <p>2 Q. Who was that? Do you recall who the</p> <p>3 CFO was?</p> <p>4 <b>A. At that -- I don't know what -- What's</b></p> <p><b>the date here?</b></p> <p>6 Q. I think the date is around the 1998</p> <p>7 time frame. Signed 8/25/98.</p> <p>8 <b>A. Probably Holger Huels.</b></p> <p>9 Q. And just for the record it was signed</p> <p>10 by the wholesaler on 8/25/98 and by Roxane Labs</p> <p>11 on 10/28/98.</p> <p>12 <b>A. Gotcha.</b></p> <p>13 Q. Moving on. I'm going to mark as</p> <p>14 Exhibit 26 -- I shouldn't do that, let the court</p> <p>15 reporter do that.</p> <p>16 (Exhibit Berkle 026 was marked.)</p> <p>17 MR. FAUCI: Just so counsel for the</p> <p>18 Defendant knows, this is an amended notice of</p> <p>19 deposition.</p> <p>20 BY MR. FAUCI:</p> <p>21 Q. Have you ever seen this document? Feel</p> <p>22 free to read it.</p>  | <p style="text-align: right;">184</p> <p>1 MR. GASTWIRTH: Objection to form.</p> <p>2 THE DEPONENT: The Texas case was after</p> <p>3 I had retired from BIPI.</p> <p>4 BY MR. FAUCI:</p> <p>5 Q. When you left, were you -- That's fine.</p> <p>6 The question is, when you left, did anybody tell</p> <p>7 you that you should look through your documents</p> <p>8 and set aside certain documents?</p> <p>9 <b>A. No.</b></p> <p>10 MR. GASTWIRTH: Objection to form.</p> <p>11 BY MR. FAUCI:</p> <p>12 Q. What number was that, 26?</p> <p>13 <b>A. 26, yeah.</b></p> <p>14 Q. I'm going to show you a document which</p> <p>15 the court reporter will mark as 27.</p> <p>16 (Exhibit Berkle 027 was marked.)</p> <p>17 BY MR. FAUCI:</p> <p>18 Q. Take a moment to familiarize yourself.</p> <p>19 <b>A. Okay.</b></p> <p>20 Q. Turning to the second page.</p> <p>21 <b>A. All right.</b></p> <p>22 Q. Actually just go to the back. There's</p>   |
| <p style="text-align: right;">183</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. When was the first time?</p> <p>3 <b>A. This is the amended copy?</b></p> <p>4 Q. Yes. Although I can represent that the</p> <p>5 only change on that from there to the original is</p> <p>6 the location.</p> <p>7 <b>A. So the original was about a week ago.</b></p> <p>8 Q. Were you asked to look for documents</p> <p>9 prior to this deposition?</p> <p>10 <b>A. Yes, I was.</b></p> <p>11 Q. Did you find any?</p> <p>12 <b>A. No, I did not.</b></p> <p>13 Q. Where did you look?</p> <p>14 <b>A. Where did I look? In my home.</b></p> <p>15 Q. That's good enough.</p> <p>16 <b>A. Yeah.</b></p> <p>17 Q. When you left BIPI in late 2003, were</p> <p>18 you asked to look for documents or search for e-</p> <p>19 mails in connection with the Texas case that</p> <p>20 we've talked about previously or any other case</p> <p>21 involving allegations about average wholesale</p> <p>22 price?</p> | <p style="text-align: right;">185</p> <p>1 two documents here. There's a cover one.</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. I'm going to mostly focus on the second</p> <p>4 part of it. Is it fair to say that you drafted</p> <p>5 pages two through four of this?</p> <p>6 <b>A. I'm sorry?</b></p> <p>7 Q. Is it fair to say that you drafted</p> <p>8 pages two through four of this?</p> <p>9 <b>A. It's got my signature on it so I assume</b></p> <p>10 <b>that's so.</b></p> <p>11 Q. Do you recall drafting this?</p> <p>12 <b>A. Not specifically.</b></p> <p>13 Q. Is this an employee bulletin? Do you</p> <p>14 see that at the top?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Who do you -- Who did you understand</p> <p>17 that this employee bulletin would go to?</p> <p>18 <b>A. I would assume that it was directed</b></p> <p>19 <b>towards BIPI and Roxane employees.</b></p> <p>20 Q. I'm going to look at the paragraph</p> <p>21 beginning, As we are all aware. Do you see that?</p> <p>22 <b>A. Yes.</b></p> |

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| <p>1     Q. As we are all aware, we have taken<br/>2 several steps in the past two years to increase<br/>3 the level of business unit collaboration and<br/>4 focus across organizations; e.g., business unit<br/>5 operating committee, ethical pharmaceutical<br/>6 committee.</p> <p>7     Would you agree that -- Is that your<br/>8 recollection now that over the past two years<br/>9 leading up to 1998 you took several steps to<br/>10 increase the level of business unit<br/>11 collaboration?</p> <p>12    <b>A. Again, the goal would be to create eff</b><br/>13 <b>-- efficiencies and synergies where it made</b><br/>14 <b>sense. However, Roxane and BIPI were always</b><br/>15 <b>separate entities, they were always separate</b><br/>16 <b>management within each entity and the day-to-day</b><br/>17 <b>business for each of those entities was done</b><br/>18 <b>within that entity.</b></p> <p>19    Q. It says, The changes I will describe in<br/>20 this announcement build on this foundation.<br/>21 These changes also are designed to build on the<br/>22 strengths of Boehringer Ingelheim</p>                         | <p>186</p> <p>1     strengthening the synergy between our solid<br/>2 liquid dosage and injectable multi-source<br/>3 businesses. Is that what you talked about<br/>4 earlier with Ben Venue being an injectable<br/>5 company?</p> <p>6     <b>A. Correct. So the solid liquid dose was</b><br/>7 <b>-- referred to Roxane and the injectable referred</b><br/>8 <b>to Ben Venue.</b></p> <p>9     Q. It says, I've asked Tom Russillo to<br/>10 take on this critical and complex challenge.<br/>11 Multi-source marketing within RLI, Roxane, now<br/>12 will report to Tom. Who's Tom Russillo?</p> <p>13    <b>A. Tom Russillo was president of Ben Venue</b><br/>14 <b>Laboratories and obviously with this change took</b><br/>15 <b>over responsibility for the multi-source business</b><br/>16 <b>within Roxane as well.</b></p> <p>17    Q. Was Tom Russillo at Ben Venue prior to<br/>18 its acquisition by the Boehringer Ingelheim<br/>19 family?</p> <p>20    <b>A. Yes, he was.</b></p> <p>21    Q. Do you know if Russillo came to work<br/>22 for Roxane?</p>                                      |
| <p>187</p> <p>1     Pharmaceuticals, Inc., BIPI, Roxane Laboratories<br/>2 and Ben Venue Laboratories while achieving much<br/>3 greater synergy across the entire business unit.<br/>4 Do you see that?</p> <p>5     <b>A. Yes, I do.</b></p> <p>6     Q. We've talked about synergy a bit<br/>7 earlier today. What does it mean to increase the<br/>8 synergy across the entire business unit?</p> <p>9     <b>A. Again, to do away with wasted effort in</b><br/>10 <b>the sense that you have duplication of -- of</b><br/>11 <b>effort in various functions. And where it made</b><br/>12 <b>sense to amalgamate services that were common to</b><br/>13 <b>the various companies and divisions, then we</b><br/>14 <b>attempted to do that. But, again, the day-to-day</b><br/>15 <b>operations for each of those businesses was</b><br/>16 <b>conducted and carried out by management within</b><br/>17 <b>those divisions.</b></p> <p>18    Q. If you look at the next page, the first<br/>19 bullet point.</p> <p>20    <b>A. Okay.</b></p> <p>21    Q. We want to expand our important multi-<br/>22 source business by capitalizing on and</p> | <p>189</p> <p>1     MR. GASTWIRTH: Objection to form.<br/>2     THE DEPONENT: I believe he was a Ben<br/>3 Venue employee, but you would have to check that<br/>4 with people more in the know than I.<br/>5 BY MR. FAUCI:<br/>6     Q. But it's fair to say regardless of who<br/>7 he formally worked for that Roxane employees<br/>8 reported to him?<br/>9     <b>A. Yes.</b><br/>10    Q. I'm going to look down at another<br/>11 bullet point. It says, To ensure that we are<br/>12 bringing BIPI's medical and drug regulatory<br/>13 affairs' knowledge to bear on both our multi-<br/>14 source and specialty products, Roxane's, or<br/>15 RLI's, medical and drug regulatory affairs'<br/>16 current product will report with Doug Wilson's<br/>17 BIPI medical/DRA organization. What are the<br/>18 medical and drug regulatory affairs departments?<br/>19     <b>A. Again, these are the people within that</b><br/>20 <b>organization that are responsible for conducting</b><br/>21 <b>clinical research and for liaising with the FDA.</b><br/>22     Q. It says that RLI's medical and drug</p> |

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| <p style="text-align: right;">190</p> <p>1 regulatory affairs will report within Doug<br/>2 Wilson's BIPI/DRA organization. Why was that?<br/>3     <b>A. Again, in order to create efficiencies.</b><br/>4     Q. What type of efficiencies could that<br/>5 create?<br/>6     <b>A. BIPI had a large department, you know,</b><br/>7     <b>consisting of many more physicians,</b><br/>8     <b>statisticians, et cetera. So it would allow</b><br/>9     <b>Roxane -- people responsible for these areas to</b><br/>10   <b>tap into the larger BIPI medical regulatory</b><br/>11   <b>organization.</b></p> <p>12     Q. Next bullet point it says, RLI branded<br/>13 and specialty products. Are those branded<br/>14 generics?</p> <p>15       MR. GASTWIRTH: Objection to form.</p> <p>16       THE DEPONENT: I assume it's branded<br/>17 generics.</p> <p>18     BY MR. FAUCI:</p> <p>19     Q. Our RLI branded and specialty products<br/>20 will become an important component of our<br/>21 national and international business strategy. We<br/>22 want to expand our support to these products by</p>   | <p style="text-align: right;">192</p> <p>1     <b>able to allow Roxane to benefit from the</b><br/>2     <b>expertise within BIPI.</b><br/>3       But, again, I emphasize that the day-<br/>4 to-day operations were conducted for the Roxane<br/>5 branded products -- branded generic products<br/>6 within the Roxane structure.</p> <p>7     Q. Next bullet point it says, BIPI and RLI<br/>8 contacting will be combined into a single<br/>9 organization. What are BIPI and RLI contracting?</p> <p>10       I'm on the next page, I'm sorry, the<br/>11 last bullet point.</p> <p>12       <b>A. Okay. Again, these are the -- this is</b><br/>13       <b>the department that would set up contracts with</b><br/>14       <b>purchasing groups or distributors of the BIPI and</b><br/>15       <b>Roxane products.</b></p> <p>16       Q. What do you mean set up contracts?</p> <p>17       <b>A. Again, if there was a -- a distribution</b><br/>18       <b>agreement that was negotiated with a purchasing</b><br/>19       <b>group or a wholesaler or a -- you know, any other</b><br/>20       <b>distributor, that a contract would be put</b><br/>21       <b>together representing the terms of the agreement</b><br/>22       <b>between the two parties.</b></p> |
| <p style="text-align: right;">191</p> <p>1 increasing the degree of collaboration between<br/>2 the marketing of RLI product lines and BIPI<br/>3 product lines. Do you see that?</p> <p>4     <b>A. Yes, I do.</b></p> <p>5     Q. How would increasing the degree of<br/>6 collaboration between Roxane and BIPI marketing<br/>7 be beneficial?</p> <p>8     <b>A. Again, this was specific to the branded</b><br/>9     <b>-- RLI branded products. So at that time BIPI of</b><br/>10   <b>course had a much greater expertise and</b><br/>11   <b>experience in marketing these types of products.</b></p> <p>12       Keep in mind that Roxane was made up of<br/>13 a couple different types of businesses. The<br/>14 multi-source, which was very -- and then they had<br/>15 these so-called branded generics, which they<br/>16 hoped to market more along the lines of a true<br/>17 original brand such as contained in the BIPI<br/>18 product line.</p> <p>19       And strategically we made the decision,<br/>20 fine, let's see what we could do and it made<br/>21 sense to combine, you know, at certain levels the<br/>22 reporting relationship to add to be able -- to be</p> | <p style="text-align: right;">193</p> <p>1     Q. Next sentence it says, John Powers will<br/>2 lead the day-to-day management of this operation.<br/>3 He did lead the day-to-day management for BIPI<br/>4 and Roxane?</p> <p>5       MR. GASTWIRTH: Objection to form.</p> <p>6       THE DEPONENT: You know, I recall that<br/>7 he was predominantly involved on the Roxane's<br/>8 products, but I can't recall specifically beyond<br/>9 that.</p> <p>10      BY MR. FAUCI:</p> <p>11      Q. You drafted this document, correct?</p> <p>12      <b>A. I did. This was also ten years ago.</b></p> <p>13      Q. I'm going to ask you to go back to the<br/>14 second page. The first page of this document,<br/>15 second page of the exhibit.</p> <p>16      <b>A. Right.</b></p> <p>17      Q. By the year 2004, very beginning, our<br/>18 ethical pharmaceutical business is expected to<br/>19 generate in the USA more than 40 percent of<br/>20 Boehringer Ingelheim's worldwide ethical<br/>21 pharmaceutical business. I'm just trying to<br/>22 understand what that means. Can you tell me what</p>  |

55 (Pages 214 to 217)

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| <p style="text-align: right;">214</p> <p>1 Q. The first page of this is an e-mail.<br/>     2 It's from Dan Gerrity.<br/>     3 A. Right.<br/>     4 Q. It seems to attach a document about the<br/>     5 pricing policy and procedures. Do you see that?<br/>     6 A. Yes.<br/>     7 Q. It says, Please review the attached<br/>     8 draft pricing policy and procedure and provide me<br/>     9 any changes you deem appropriate. Do you see<br/>     10 that?<br/>     11 A. Yes, I do.<br/>     12 Q. And this e-mail is dated May 3rd, 2001.<br/>     13 Do you see that?<br/>     14 A. I do.<br/>     15 Q. Let's turn to the pricing policy and<br/>     16 procedure document. It says, Scope, this policy<br/>     17 is applicable to wholesale acquisition cost,<br/>     18 average wholesale price, minimum bid price,<br/>     19 direct price for brand products of Boehringer<br/>     20 Ingelheim Pharmaceuticals, Inc. and Roxane<br/>     21 Laboratories.<br/>     22 I had to adjust my microphone there.</p>   | <p style="text-align: right;">216</p> <p>1 brand products; is that correct?<br/>     2 A. I believe so. And, you know, again my<br/>     3 memory isn't a hundred percent, but this was in<br/>     4 May of '01, according to the cover memo -- cover<br/>     5 e-mail --<br/>     6 Q. Cover e-mail. Sure.<br/>     7 A. -- and I believe this was approaching<br/>     8 the time when we divested of the Roxane branded<br/>     9 generic line.<br/>     10 Q. What do you mean you divested of the<br/>     11 Roxane branded generic line?<br/>     12 A. The -- Again, if I recall correctly<br/>     13 Viramune, which was under the Roxane label, was<br/>     14 transferred to the BIPI label and then the<br/>     15 palliative care line was in fact divested sold.<br/>     16 Q. To who?<br/>     17 A. It was initially sold to Elan who then<br/>     18 I know in turn sold it somewhere else. So this<br/>     19 was -- you know, this would have been for a very<br/>     20 short period of time.<br/>     21 Q. What was the -- the drug that you said<br/>     22 was transferred to BIPI?</p> |
| <p style="text-align: right;">215</p> <p>1 Was there a single policy applicable to those<br/>     2 prices for brand products of Boehringer Ingelheim<br/>     3 Pharmaceuticals and Roxane Labs?<br/>     4 MR. GASTWIRTH: Objection. Form.<br/>     5 THE DEPONENT: A single policy?<br/>     6 BY MR. FAUCI:<br/>     7 Q. Let me rephrase that. It says, This<br/>     8 policy is applicable to various prices for brand<br/>     9 products of Boehringer Ingelheim Pharmaceuticals,<br/>     10 Inc. and Roxane Labs. Do you see that?<br/>     11 A. Yes, I do.<br/>     12 Q. Does it surprise you that there's a<br/>     13 document out there that says that there's one --<br/>     14 that there's a policy that's applicable to prices<br/>     15 for both companies?<br/>     16 MR. GASTWIRTH: Objection. Form.<br/>     17 THE DEPONENT: My understanding of this<br/>     18 is that it's applicable to the branded products.<br/>     19 Okay. So BIPI and branded generics of Roxane.<br/>     20 BY MR. FAUCI:<br/>     21 Q. So you think this pertains to a pricing<br/>     22 policy for Roxane's branded generics and BIPI's</p> | <p style="text-align: right;">217</p> <p>1 A. Viramune, which is a drug for treatment<br/>     2 of AIDS.<br/>     3 Q. What do you mean it was transferred to<br/>     4 BIPI?<br/>     5 A. Well, rather than be sold under the<br/>     6 Roxane label, it was sold under the BIPI label.<br/>     7 Q. I'm a neophyte in this --<br/>     8 A. Right.<br/>     9 Q. -- so I'm going to ask a question, it<br/>     10 might be ignorant to you, but for Viramune --<br/>     11 A. Viramune.<br/>     12 Q. Viramune, when it was sold under the<br/>     13 Roxane label did they have any special rights to<br/>     14 it?<br/>     15 MR. GASTWIRTH: Objection to the -- to<br/>     16 the extent that you're asking questions now about<br/>     17 a drug that's not at issue in the case. I'm just<br/>     18 going to object on the record.<br/>     19 MR. FAUCI: Okay.<br/>     20 THE DEPONENT: Still answer?<br/>     21 BY MR. FAUCI:<br/>     22 Q. Please.</p>  |

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| <p style="text-align: right;">222</p> <p>1     <b>A. Yes, it was.</b></p> <p>2     Q. And this policy is applicable to</p> <p>3     wholesale acquisition costs and average wholesale</p> <p>4     prices. That's what it says at the top?</p> <p>5     <b>A. Yes.</b></p> <p>6     Q. When you -- If you were to approve a</p> <p>7     wholesale acquisition cost or an average</p> <p>8     wholesale price, what would be sent to you to</p> <p>9     make the decision on whether or not to approve</p> <p>10    it?</p> <p>11    MR. GASTWIRTH: Objection. Form.</p> <p>12    THE DEPONENT: You know, let me</p> <p>13    reiterate that I can't recall exactly what was</p> <p>14    sent to me. My focus was on WAC. It would have</p> <p>15    been a summary of the information that is listed</p> <p>16    under pricing proposals.</p> <p>17    MR. FAUCI: Can you repeat the answer</p> <p>18    for me.</p> <p>19    (Record was read by the court</p> <p>20    reporter.)</p> <p>21 BY MR. FAUCI:</p> <p>22 Q. What types of information would be</p>  | <p style="text-align: right;">224</p> <p>1     Q. Plan changes to prices are extremely</p> <p>2     confidential and should be kept to PTC, pricing</p> <p>3     committee members only. Do you see that?</p> <p>4     <b>A. Yes, I do.</b></p> <p>5     Q. And would you keep -- if you received</p> <p>6     information in this process on a branded generic</p> <p>7     for Roxane would you agree that plan changes to</p> <p>8     their price would be extremely confidential?</p> <p>9     MR. GASTWIRTH: Objection. Form.</p> <p>10    THE DEPONENT: I -- I would think it</p> <p>11    was because a branded generic there is still</p> <p>12    multi-source products out there and, therefore,</p> <p>13    it would be very critical in terms of making sure</p> <p>14    that competitors weren't aware of the plans that</p> <p>15    were to be put in place regarding pricing.</p> <p>16    MR. FAUCI: We can move on from that</p> <p>17    document.</p> <p>18    MS. ROGERS: Jeff, before you go I just</p> <p>19    want it to be clear on the record, and maybe the</p> <p>20    court reporter could read it back, when he was</p> <p>21    reading that paragraph I think he -- perhaps he</p> <p>22    misspoke. When he read impact on potential</p> |
| <p style="text-align: right;">223</p> <p>1     listed in a pricing proposal?</p> <p>2     <b>A. I think if you read this, you'll --</b></p> <p>3     <b>you'll see what it is. You know as much as I do.</b></p> <p>4     Q. Tell me what you're looking at that --</p> <p>5     What are you looking at?</p> <p>6     <b>A. Well, look under new product pricing</b></p> <p>7     <b>proposals. You know, competitive situation.</b></p> <p>8     Q. Why don't you just read that into the</p> <p>9     record then.</p> <p>10    <b>A. Forecasted net sales generated -- And</b></p> <p>11    <b>again, I would emphasize it's probably a summary,</b></p> <p>12    <b>it doesn't necessarily include all that</b></p> <p>13    <b>information. Forecasted net sales generated</b></p> <p>14    <b>based on proposed price, growth rates, market</b></p> <p>15    <b>conditions, current and anticipated market share</b></p> <p>16    <b>of BI competitive products, daily wholesale</b></p> <p>17    <b>prices of direct competitors, impact on</b></p> <p>18    <b>competitive position, expected discounts that</b></p> <p>19    <b>will be given, probable reaction of managed care</b></p> <p>20    <b>organizations, impact on potential medical</b></p> <p>21    <b>rebates and any market research that was</b></p> <p>22    <b>conducted.</b></p> | <p style="text-align: right;">225</p> <p>1     Medicaid rebates. I thought he said medical</p> <p>2     rebates. Perhaps I misheard. I just want to be</p> <p>3     sure that that's clear. Did anyone hear it?</p> <p>4     Did you read Medicaid rebates? Is that</p> <p>5     what you read?</p> <p>6     THE DEPONENT: You know, I mean, I</p> <p>7     assume I read what it says there, but --</p> <p>8     MS. ROGERS: Okay.</p> <p>9     THE DEPONENT: -- I don't know.</p> <p>10    MR. FAUCI: We'll stipulate that he</p> <p>11    meant to read what it says.</p> <p>12    THE DEPONENT: My intent was to read</p> <p>13    Medicaid.</p> <p>14    MS. ROGERS: Thank you.</p> <p>15 BY MR. FAUCI:</p> <p>16 Q. This document on -- One more thing.</p> <p>17 I'm sorry. I know I told you to put it away, but</p> <p>18 one final question on it. Do you know if this --</p> <p>19 The e-mail says that this was a draft pricing</p> <p>20 policy procedure.</p> <p>21 A. Right.</p> <p>22 Q. Do you know if it was enacted?</p>   |

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| <p style="text-align: right;">226</p> <p>1     <b>A. I believe it was -- The committee was</b><br/>     2 <b>put in place certainly for BIPI products, but I</b><br/>     3 <b>don't want to say that I'm absolutely sure it was</b><br/>     4 <b>for Roxane only because of what I told you</b><br/>     5 <b>previously. I knew that there were discussions</b><br/>     6 <b>taking place to divest of part of the branded</b><br/>     7 <b>generic line and -- relative to Viramune. So I'm</b><br/>     8 <b>not -- my memory fails me. I'm not a hundred</b><br/>     9 <b>percent sure.</b></p> <p>10    Q. You can put that aside now for real.</p> <p>11    <b>A. Okay.</b></p> <p>12    Q. Are you familiar with the</p> <p>13 pharmaceutical product known as Furosemide?</p> <p>14    <b>A. As an ex-pharmacist, yes.</b></p> <p>15    Q. When were you a pharmacist?</p> <p>16    <b>A. Many years ago. I graduated with a</b><br/>     17 <b>pharmacy degree. I really didn't -- I practiced</b><br/>     18 <b>for an extremely short period of time.</b></p> <p>19    Q. What is Furosemide?</p> <p>20    <b>A. Furosemide is a generic name for a</b><br/>     21 <b>diuretic, a so-called water pill.</b></p> <p>22    Q. Was it a BIPI product?</p> | <p style="text-align: right;">228</p> <p>1     Judy Waterer. It says, Attached is a document<br/>     2 called standby statement, Furosemide price<br/>     3 change. Do you see that?</p> <p>4        MR. GASTWIRTH: Objection. Form.</p> <p>5        THE DEONENT: Yes, I do.</p> <p>6        MR. GASTWIRTH: I believe you just<br/>     7 switched the from and the to.</p> <p>8    BY MR. FAUCI:</p> <p>9        Q. Fair enough. The document is from Judy<br/>     10 Waterer to Lesli Paoletti. I stand corrected.</p> <p>11        It says, Here's a shot at it, please<br/>     12 make modifications as you see fit, then pass it<br/>     13 by Pam Demala. Who's Pam Demala?</p> <p>14        <b>A. Pam Demala was a BIPI -- either BIPI or</b><br/>     15 <b>BIC employee, I'm not sure, but certainly within</b><br/>     16 <b>the BI side, in the public relations area.</b></p> <p>17        Q. Why would a Furosemide price change be<br/>     18 passed by Pam Demala?</p> <p>19        <b>A. I haven't got a clue.</b></p> <p>20        Q. And it says that, You may need to call<br/>     21 her and let her know the background, she'll<br/>     22 probably want to pass it by Berkle and Russillo</p> |
| <p style="text-align: right;">227</p> <p>1     <b>A. No, it was not.</b></p> <p>2     Q. Do you know if it was a Roxane product?</p> <p>3     <b>A. I think it was within the Roxane multi-</b><br/>     4 <b>source product line.</b></p> <p>5     Q. It's not a brand of generic, is it?</p> <p>6     <b>A. It is not.</b></p> <p>7     Q. I'm going to hand you Exhibit Number</p> <p>8     32.</p> <p>9        (Exhibit Berkle 032 was marked.)</p> <p>10      THE DEONENT: Okay.</p> <p>11    BY MR. FAUCI:</p> <p>12    Q. Are you familiar with this document?</p> <p>13    <b>A. No, I'm not.</b></p> <p>14    Q. Who's Judy Waterer again?</p> <p>15    <b>A. She was a Roxane employee.</b></p> <p>16    Q. Do you know who Lesli Paoletti was?</p> <p>17    <b>A. You know, the name is vaguely familiar,</b><br/>     18 <b>but I couldn't even tell you what position she</b><br/>     19 <b>held. She was a Roxane employee.</b></p> <p>20    Q. She was at Roxane?</p> <p>21    <b>A. Yeah.</b></p> <p>22    Q. It's an e-mail from Lesli Paoletti to</p>   | <p style="text-align: right;">229</p> <p>1     as well. Any idea why Ms. Waterer would think<br/>     2 that Pam Demala would want to pass it by you?</p> <p>3     <b>A. I don't know. And the only other</b><br/>     4 <b>comment I would make is I'm not sure in the</b><br/>     5 <b>timing but there's somewhere in 2000 that we --</b><br/>     6 <b>we totally changed the structure of the</b><br/>     7 <b>organization and I really was no longer involved</b><br/>     8 <b>in the Roxane business after that point in time.</b><br/>     9 <b>So I don't know whether this coincides with that</b><br/>     10 <b>time period or not.</b></p> <p>11    Q. Do you remember around this time Roxane<br/>     12 -- Do you have any knowledge about the fact that<br/>     13 around this time Roxane raised the AWPs for its<br/>     14 Furosemide products?</p> <p>15        MR. GASTWIRTH: Objection. Form. I'm<br/>     16 sorry. Can I hear that back, please.</p> <p>17        (Record was read by the court<br/>     18 reporter.)</p> <p>19        MR. FAUCI: I can read it again if<br/>     20 you'd like.</p> <p>21        MR. GASTWIRTH: Thanks.</p> <p>22    BY MR. FAUCI:</p>                      |

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| 230  | 232  |
| <p>1 Q. Do you have any recollection whether<br/>     2 around the 2000 time frame Roxane raised the AWPs<br/>     3 for its Furosemide products?</p> <p>4 A. <b>I'm not aware.</b></p> <p>5 Q. We can move on from that document.<br/>     6 Can we go off the record for two<br/>     7 minutes.</p> <p>8 THE VIDEOGRAPHER: It's 3:14. We're<br/>     9 going off the record.</p> <p>10 (Short break was taken.)</p> <p>11 (Exhibit Berkle 033 was marked.)</p> <p>12 THE VIDEOGRAPHER: It's 3:28. We're<br/>     13 going back on the record.</p> <p>14 BY MR. FAUCI:</p> <p>15 Q. Mr. Berkle, I've handed you what's been<br/>     16 marked as Exhibit 33.</p> <p>17 A. Yes.</p> <p>18 Q. Can you take a moment to familiarize<br/>     19 yourself with it.</p> <p>20 A. Okay.</p> <p>21 Q. What's the subject line of this e-mail?</p> <p>22 A. It says Furosemide tablet AWP</p>   | <p>1 A. <b>Fred was a Roxane employee.</b><br/>     2 Q. And it's sent to you, Shelly Berkle?<br/>     3 A. <b>Yes, it is.</b><br/>     4 Q. Subject, Roxicodone 15/30mg launch<br/>     5 plan. Do you see that?<br/>     6 A. <b>Yes, I do.</b><br/>     7 Q. And then does the attachment to this e-<br/>     8 mail appear to be a launch plan for Roxicodone?<br/>     9 A. <b>It certainly appears to be at least a</b><br/>     10 <b>summary of a launch plan. Highlights.</b><br/>     11 Q. Is Roxicodone a Roxane product?<br/>     12 A. <b>Yes, it was.</b><br/>     13 Q. Second sentence of the e-mail, The<br/>     14 strategy is essentially what you saw in<br/>     15 Tarrytown. What's Tarrytown?<br/>     16 A. <b>It's -- Tarrytown is a town in New York</b><br/>     17 <b>State close -- just across the border from</b><br/>     18 <b>Connecticut.</b><br/>     19 Q. What brought you to Tarrytown?<br/>     20 A. <b>I'm sorry?</b><br/>     21 Q. What brought you to Tarrytown?<br/>     22 A. <b>Well, there's a conference that was</b></p>   |
| 231  | 233  |
| <p>1 adjustment.</p> <p>2 Q. Have you read or seen this before?</p> <p>3 A. <b>No, I have not.</b></p> <p>4 Q. That's all. We're going to do another<br/>     5 document.</p> <p>6 (Exhibit Berkle 034 was marked.)</p> <p>7 BY MR. FAUCI:</p> <p>8 Q. The court reporter has handed you<br/>     9 what's been marked as Exhibit 34. It's a very<br/>     10 lengthy document. Feel free to read it, but I'm<br/>     11 going to direct your attention to specific parts<br/>     12 of it, so just tell me when you feel ready to<br/>     13 have some questions -- have some questions asked.</p> <p>14 MR. BREEN: Did you already mark this<br/>     15 one?</p> <p>16 MR. FAUCI: Yep. 34.</p> <p>17 THE DEPONENT: Okay.</p> <p>18 BY MR. FAUCI:</p> <p>19 Q. Do you recognize this document?</p> <p>20 A. <b>Not specifically.</b></p> <p>21 Q. Look at the first page. It appears to<br/>     22 be an e-mail from Fred Duy. Who's he?</p> | <p>1 utilized frequently for meetings by -- by the<br/>     2 <b>BIPI people, BIPI/Roxane people.</b><br/>     3 Q. Do you recall -- The strategy is<br/>     4 essentially what you saw in Tarrytown. Do you<br/>     5 recall being exposed to strategies relating to a<br/>     6 launch document in Tarrytown?<br/>     7 A. <b>I can't -- I can't remember</b><br/>     8 <b>specifically that meeting. You know, certainly I</b><br/>     9 <b>was at multiple meetings over the years in</b><br/>     10 <b>Tarrytown, but I can't remember the details.</b><br/>     11 Q. It goes on to say that, It--I think the<br/>     12 strategy--has been updated and expanded with<br/>     13 specific tactics by Doug Bierl with input from<br/>     14 lots of people here and in Ridgefield. Who's<br/>     15 Doug Bierl?<br/>     16 A. <b>I haven't got a clue.</b><br/>     17 Q. What's Ridgefield?<br/>     18 A. <b>Ridgefield is the town -- location of</b><br/>     19 <b>BI Pharmaceuticals.</b><br/>     20 Q. Where was Roxane?<br/>     21 A. <b>In Columbus, Ohio.</b><br/>     22 Q. Ridgefield means BIPI?</p> |

60 (Pages 234 to 237)

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| <p style="text-align: right;">234</p> <p>1     <b>A. It means BIPI, BIC.</b></p> <p>2     Q. BIC. Why are people in Ridgefield<br/>3 updating and expanding a strategy for the launch<br/>4 of a Roxane product?</p> <p>5       MR. GASTWIRTH: Objection. Form.</p> <p>6       THE DEPONENT: This goes along with<br/>7 some of the memos you've shown me before.<br/>8 Roxicodone was a branded generic and, therefore,<br/>9 there was some supervisory role that some -- a<br/>10 few BIPI people played. But again, the launch<br/>11 plan, as you see here, was put together by Roxane<br/>12 employees.</p> <p>13 BY MR. FAUCI:</p> <p>14     Q. It says, We expect approval by the user<br/>15 fee deadline, August 29th. What does that mean?</p> <p>16     <b>A. I assume that refers to the FDA<br/>17 approval.</b></p> <p>18     Q. FDA approval -- The FDA approval of the<br/>19 drug?</p> <p>20     <b>A. Correct.</b></p> <p>21     Q. Okay. Last sentence of that paragraph,<br/>22 If you can fit it into your schedule, we would be</p>     | <p style="text-align: right;">236</p> <p>1     Q. Do you recall if you were one of the<br/>2 people who gave approval for marketing the<br/>3 Roxicodone product?</p> <p>4       MR. GASTWIRTH: Objection. Form.</p> <p>5       THE DEPONENT: I -- I believe I<br/>6 certainly was a part of the senior management<br/>7 team that -- that would have heard the<br/>8 recommendation and would have agreed to -- to<br/>9 marketing it.</p> <p>10 BY MR. FAUCI:</p> <p>11     Q. I direct your attention to page 23.<br/>12 It's Shaffer 001474. The heading is Market<br/>13 Situation, Market Characteristic Summary.</p> <p>14     <b>A. Got it.</b></p> <p>15     Q. Do you see at the bottom it says price<br/>16 and reimbursement driven. Do you see that?</p> <p>17     <b>A. I see that.</b></p> <p>18     Q. At the top it's market characteristics<br/>19 summary. Do you see that?</p> <p>20     <b>A. Yes.</b></p> <p>21     Q. Let's break that down. What does it<br/>22 mean for something to be price driven?</p>  |
| <p style="text-align: right;">235</p> <p>1 happy to present the launch plan to you and<br/>2 whoever you think is appropriate in Ridgefield.<br/>3 Do you recall if this launch plan was presented<br/>4 to you in Ridgefield?</p> <p>5     <b>A. I do not recall.</b></p> <p>6     Q. Do you recall if you read the launch<br/>7 plan?</p> <p>8     <b>A. I don't recall specifically if I did or<br/>9 didn't.</b></p> <p>10     Q. Do you recall whether you approved the<br/>11 launch of the Roxicodone product?</p> <p>12       MR. GASTWIRTH: Objection. Form.</p> <p>13       THE DEPONENT: The way you've said it<br/>14 is basically we put together a data package for<br/>15 FDA approval, which meant that the decision was<br/>16 that we would move ahead once approved to market<br/>17 the drug.</p> <p>18       So this would have been not just a sole<br/>19 decision on my part. Okay. This would have<br/>20 involved Gerstenberg, Russillo, other people.<br/>21 Medical department, regulatory department.</p> <p>22 BY MR. FAUCI:</p> | <p style="text-align: right;">237</p> <p>1       MR. GASTWIRTH: Objection. Form.</p> <p>2       THE DEPONENT: What it means and versus<br/>3 -- Its relative importance with Roxicodone and my<br/>4 estimation may be two different things. So, you<br/>5 know, to me price driven refers almost to a<br/>6 straight multi-source type of product.</p> <p>7       But again, if my memory is correct,<br/>8 with Roxicodone the proposal was to launch it<br/>9 with 15-milligram and 30-milligram forms, which<br/>10 it says here. And I believe there was no generic<br/>11 competition to those particular dosage forms.</p> <p>12       So the reason for, in fact, putting<br/>13 together the data package to gain FDA approval<br/>14 was to, in fact, offer advantages unique to<br/>15 Roxicodone versus other generic Oxycodone<br/>16 products.</p> <p>17 BY MR. FAUCI:</p> <p>18     Q. What type of advantages?</p> <p>19     <b>A. Well, the fact that -- the predominant<br/>20 advantage would have been a number of pills that<br/>21 one had to take. So again, my memory isn't<br/>22 perfect here, but I know there was a 5-milligram</b></p> |

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| <p style="text-align: right;">258</p> <p>1 and with the United States government. The State<br/>     2 -- The remaining state is the State of Florida<br/>     3 having resolved the Ven-a-Care Texas cases<br/>     4 regarding -- relating to Roxane and the Ven-a-<br/>     5 Care California matter relating to Roxane.</p> <p>6 MR. GASTWIRTH: And I'll just make a<br/>     7 statement on the record that I'm going to<br/>     8 reiterate my objection at the beginning of<br/>     9 today's deposition with respect to any cross-<br/>     10 notices that occurred in any other states last<br/>     11 minute that we were surprised with and any<br/>     12 testimony by Mr. Berkley being used in connection<br/>     13 with any other cases outside of the DOJ case for<br/>     14 which this deposition had been originally<br/>     15 noticed.</p> <p>16 BY MR. BREEN:</p> <p>17 Q. Okay. We'll deal with that later.<br/>     18 Hopefully we won't -- Hopefully we won't be<br/>     19 taking your deposition again in the Florida case.<br/>     20 I'm going to do all I can to avoid that --</p> <p>21 A. I would appreciate that.</p> <p>22 Q. -- today. So you can be routing for me</p> | <p style="text-align: right;">260</p> <p>1 Q. The U.S. parent.<br/>     2 A. Of BIPI.<br/>     3 Q. But you during your tenure at<br/>     4 Boehringer Ingelheim -- And I'll use that<br/>     5 generally to mean the U.S. operations unless I<br/>     6 say otherwise. Okay?</p> <p>7 A. Fine.</p> <p>8 Q. During your tenure there, were you<br/>     9 aware as to whether or not the boards of BIPI and<br/>     10 Boehringer Ingelheim Corporation had identical<br/>     11 memberships?</p> <p>12 MR. GASTWIRTH: Objection. Form.</p> <p>13 THE DEPONENT: I am not aware that they<br/>     14 have identical memberships.</p> <p>15 BY MR. BREEN:</p> <p>16 Q. Were you a member of either board?<br/>     17 A. No, I was not.</p> <p>18 Q. Did you ever attend any of their board<br/>     19 meetings?</p> <p>20 A. I would attend some meetings partially<br/>     21 if an agenda item reflected the BIPI<br/>     22 pharmaceutical business.</p>   |
| <p style="text-align: right;">259</p> <p>1 on that one.<br/>     2 All right. Let's get started.<br/>     3 Just for context, you went to the U.S.<br/>     4 operations of Boehringer Ingelheim in what year?<br/>     5 A. 1994.<br/>     6 Q. 1994. And from 1994 until you left in<br/>     7 2003?<br/>     8 A. End of 2003.<br/>     9 Q. End of 2003. You at no time worked<br/>     10 directly for or as an employee of Roxane<br/>     11 Laboratories, did you?<br/>     12 A. That's correct.<br/>     13 Q. You at all times worked for the entity<br/>     14 known as Boehringer Ingelheim Corporation?<br/>     15 A. More correctly Boehringer Ingelheim<br/>     16 Pharmaceuticals, Inc.<br/>     17 Q. Okay. Which is -- the acronym for that<br/>     18 is BIPI, correct?<br/>     19 A. Correct.<br/>     20 Q. The Boehringer Ingelheim Corporation is<br/>     21 the parent of BIPI?<br/>     22 A. The U.S. parent.</p>  | <p style="text-align: right;">261</p> <p>1 Q. Did you ever attend a meeting of the<br/>     2 two corporations' boards that was held jointly?<br/>     3 MR. GASTWIRTH: Objection. Form.<br/>     4 THE DEPONENT: I don't recall.<br/>     5 BY MR. BREEN:<br/>     6 Q. Do you recall whether -- which<br/>     7 corporation's board you met with?<br/>     8 MR. GASTWIRTH: Objection. Form.<br/>     9 THE DEPONENT: The -- Certainly the<br/>     10 majority of the meetings I would have attended as<br/>     11 an observer or for a particular agenda item would<br/>     12 be the BIC board.<br/>     13 BY MR. BREEN:<br/>     14 Q. The Boehringer Ingelheim Corporation<br/>     15 board?<br/>     16 A. Correct.<br/>     17 Q. And where was -- And when I say BIC, we<br/>     18 mean Boehringer Ingelheim Corporation, correct?<br/>     19 A. Correct.<br/>     20 Q. Where was BIC headquartered?<br/>     21 A. In Ridgefield, Connecticut.<br/>     22 Q. Who was the president during your</p> |

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| <p>1 tenure?</p> <p>2 MR. GASTWIRTH: Objection. Form.</p> <p>3 THE DEPONENT: Werner Gerstenberg.</p> <p>4 BY MR. BREEN:</p> <p>5 Q. And who was the president of BIPI</p> <p>6 during your tenure?</p> <p>7 A. <b>There was no president of BIPI.</b></p> <p>8 Q. Then who was the chief executive</p> <p>9 officer that ran the company?</p> <p>10 A. <b>Again, my position I believe was the</b></p> <p>11 <b>highest level position within BIPI reporting to</b></p> <p>12 <b>the present CEO of BIC.</b></p> <p>13 Q. Okay. So all and all Mr. Gerstenheimer</p> <p>14 was your boss?</p> <p>15 A. <b>Mr. Gerstenberg.</b></p> <p>16 Q. Gerstenberg. I apologize.</p> <p>17 Mr. Gerstenberg was your boss?</p> <p>18 A. <b>Correct.</b></p> <p>19 Q. Okay. Now, let's talk a little bit</p> <p>20 more about Roxane. I've heard your testimony</p> <p>21 today in response to the Department of Justice's</p> <p>22 questions, and after going back through the</p>                             | <p>1 for marketing -- sales and marketing of BIPI</p> <p>2 branded products. For Roxane branded products I</p> <p>3 had responsibility for certain periods of time</p> <p>4 during my tenure.</p> <p>5 As an example, after year 2000 I had no</p> <p>6 involvement whatsoever. Oh, I'm sorry, I</p> <p>7 shouldn't say that. Let me rescind that comment.</p> <p>8 That after 2000 I had no involvement with Roxane</p> <p>9 multi-source business whatsoever. I already</p> <p>10 stated in my previous testimony that sometime</p> <p>11 after 2000 the Roxane branded business</p> <p>12 disappeared.</p> <p>13 BY MR. BREEN:</p> <p>14 Q. That's because the Roxane corporate</p> <p>15 entity was turned into a manufacturing entity?</p> <p>16 MR. GASTWIRTH: Objection. Form.</p> <p>17 THE DEPONENT: The -- Certainly the</p> <p>18 physical company was a manufacturing site. The</p> <p>19 Roxane products were combined together with the</p> <p>20 Ben Venue products under the leadership of Tom</p> <p>21 Russillo in terms of relative to the marketing</p> <p>22 and sales and product development, sorry. Also</p> |
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| <p>1 deposition that we took some time ago, I got -- I</p> <p>2 gathered a certain impression. I'm going to</p> <p>3 state that to you and tell me -- I want you to</p> <p>4 tell me if I'm correct or not.</p> <p>5 When it came to branded pharmaceuticals</p> <p>6 being marketed by Boehringer Ingelheim's U.S.</p> <p>7 operations, you generally had some</p> <p>8 responsibilities for the sales and marketing</p> <p>9 aspects?</p> <p>10 MR. GASTWIRTH: Objection. Form.</p> <p>11 THE DEPONENT: For the -- You're</p> <p>12 talking about the branded business within BIPI?</p> <p>13 BY MR. BREEN:</p> <p>14 Q. I'm talking about the branded business</p> <p>15 in general.</p> <p>16 MR. GASTWIRTH: Objection. Form.</p> <p>17 THE DEPONENT: The --</p> <p>18 MR. GASTWIRTH: I mean, there are --</p> <p>19 MS. ROGERS: Please don't make speaking</p> <p>20 objections.</p> <p>21 THE DEPONENT: Let me -- Let me just</p> <p>22 state that throughout my tenure I was responsible</p> | <p>1 product development.</p> <p>2 BY MR. BREEN:</p> <p>3 Q. And about when was that in 2000?</p> <p>4 A. <b>I don't remember the specific dates.</b></p> <p>5 Q. Do you recall if it was earlier or</p> <p>6 later in the year?</p> <p>7 A. <b>You know what, I don't even want to</b></p> <p>8 <b>hazard to guess.</b></p> <p>9 Q. Why don't you take a look at Exhibit 32</p> <p>10 -- or 35 which -- What happened to the originals?</p> <p>11 A. <b>Yeah. It's right here.</b></p> <p>12 Q. Thank you.</p> <p>13 A. <b>Okay.</b></p> <p>14 Q. This is dated August 22nd, 2000.</p> <p>15 A. <b>Right.</b></p> <p>16 Q. And this is the one where you and Mr.</p> <p>17 Gerstenberg are approving Roxicodone prices. Do</p> <p>18 you see that?</p> <p>19 A. <b>Yes, I do.</b></p> <p>20 MR. GASTWIRTH: Objection. Form.</p> <p>21 BY MR. BREEN:</p> <p>22 Q. Is there any doubt in your mind that</p>   |